

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.J., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL AIR  
STATION, Jacksonville, FL, Employer**

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**Docket No. 08-2346  
Issued: May 12, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

Appellant filed a timely appeal from a May 9, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying reconsideration of a July 12, 2007 merit decision. As more than a year has elapsed since the last merit decision, dated July 12, 2007, and the filing of this appeal, by letter postmarked July 15, 2008, the Board lacks jurisdiction over the merits of appellant's case.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration without conducting further merit review.

**FACTUAL HISTORY**

On May 23, 2006 appellant, a 63-year-old aircraft mechanic, filed an occupational disease claim (Form CA-2) for hearing loss. He attributed his condition to working in a

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3.

hazardous noise area. The employing establishment controverted appellant's claim based on the absence of rationalized medical evidence supporting his claim.

By decision dated November 13, 2006, the Office accepted appellant's claim for hearing loss. However, it denied his claim for a schedule award because the hearing loss was not severe enough to be considered ratable.

Appellant disagreed and requested reconsideration on June 4, 2007. In support of his request, he submitted results of a hearing test conducted May 29, 2007.

By decision dated July 12, 2007, the Office denied modification of its November 13, 2006 merit decision.

Appellant disagreed and by request dated April 18, 2008, he requested reconsideration. He submitted no evidence in support of his reconsideration claim and by decision dated May 9, 2008, the Office denied reconsideration of its prior decision.

### **LEGAL PRECEDENT**

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provide guidance for the Office in using this discretion.<sup>2</sup> The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>3</sup>

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section

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<sup>2</sup> 20 C.F.R. § 10.606(b)(2).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 10.608(b).

10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>5</sup>

### **ANALYSIS**

The Board finds the Office properly denied appellant's request for reconsideration without conducting a merit review because he failed to meet any of the three regulatory criteria justifying merit review.

The Board notes that appellant did not assert that the Office misapplied or misinterpreted a point of law or advance a new and relevant legal argument. Therefore appellant has not met either of the first two regulatory criteria justifying a merit review of her claim.

Furthermore, with his application for reconsideration, appellant submitted no new evidence in support of his reconsideration request. Therefore he has not met the third criterion of submitting new and relevant evidence requiring the Office to reopen his claim for merit review and, therefore, the Office properly denied appellant's reconsideration request.

The Board finds that, as appellant did not meet any of the three criteria warranting further merit review, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration without conducting further merit review because he failed to meet any of the three regulatory criteria justifying a merit review.

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<sup>5</sup> *Annette Louise*, 54 ECAB 783 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 9, 2008 is affirmed.

Issued: May 12, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board