United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 09-1191**
	)	**Issued: November 25, 2009**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

On April 1, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 7, 2008 nonmerit decision denying reconsideration of its December 17, 2007 merit decision. As over one year has elapsed since the last merit decision in this case, dated December 17, 2007, and the filing of this appeal, dated April 1, 2009, the Board lacks jurisdiction over the merits of appellant's claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 30, 2006 appellant, a 60-year-old mail carrier, filed an occupational disease claim (Form CA-2) for presbyopia and eye strain that she attributed to casing mail. She alleged

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

that because of the "unnecessary and excessive volume of mail" on her route she developed eye problems and can no longer case mail.

Appellant submitted evidence in support of her claim.

By decision dated September 27, 2006, the Office denied the claim because the evidence of record did not demonstrate that the identified employment factor caused a medically diagnosed compensable injury.

Appellant disagreed and on December 6, 2006 requested reconsideration.

The Office referred appellant, together with a statement of accepted facts and a list of questions, to Dr. Jack Greenberg, a Board-certified ophthalmologist, for a second opinion evaluation. By report dated April 12, 2007, Dr. Greenberg reported findings on examination, a review of appellant's medical history and diagnosed asthenopic symptoms in both eyes, astigmatism and presbyopia. He opined that her presbyopia developed by itself as part of the aging process. Dr. Greenberg also opined that appellant's eye strain was caused by the presbyopia and the hyperopic astigmatism, which was exacerbated by her work environment because her employment duties require her to focus at different distances. He opined that appellant's condition could be treated using prescription eyewear and did not prevent her from casing mail.

Appellant submitted additional evidence supporting her request and by decision dated May 9, 2007 the Office vacated its prior decision, accepting her claim for aggravation of eye strain and visual discomfort.

Appellant filed a claim for wage-loss compensation for the period June 27 through July 3, 2007. Time analysis revealed she claimed 20 hours of leave without pay, 4 hours per day, for this period. Analysis also revealed appellant worked four hours per day during this period except for June 29, 2007 when she claimed four hours of sick leave.

Appellant submitted additional evidence, and by decision dated December 17, 2007 the Office denied the claim because the evidence of record did not demonstrate she was disabled from work during this period and reduction of her work hours from eight to four hours.

Appellant disagreed and on February 28, 2008 requested reconsideration.

Appellant submitted a February 27, 2008 report in which Dr. Alapat Sebastian, a Board-certified internist, opined that she could work eight hours per day provided she avoided casing mail because it would cause eye strain. In an accompanying report (Form CA-20), he noted that appellant had been evaluated by an ophthalmologist. Dr. Sebastian reported that he could not provide details from the eye examination or an exact diagnosis. He released appellant to full duty with no limitations.

By decision dated May 7, 2008, the Office denied the reconsideration request because the evidence appellant submitted in support of her request was not relevant to the issue underlying her claim, that is, whether appellant was disabled from work during the period alleged.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[5]

ANALYSIS

Appellant's reconsideration request did not demonstrate the Office erroneously applied or interpreted a specific point of law nor did it advance a new relevant legal argument not previously considered by the Office. Thus, she was not entitled to reconsideration based on the first two enumerated grounds.

Appellant also did not satisfy the third enumerated ground, submission of new relevant and pertinent evidence not previously considered by the Office. The relevant issue here is whether the accepted employment injury caused appellant to be disabled from work from June 27 through July 3, 2007. This is a medical issue that can only be established through probative rationalized medical opinion evidence. Dr. Sebastian's reports, though new, provide no grounds for reopening appellant's claim for merit review because they do not address whether or not appellant was disabled from work from June 27 through July 3, 2007.[6] Therefore, while these reports are "new" they are not relevant or pertinent to the issue underlying her claim.

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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[2] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Id*. at § 10.607(a).

[5] *Id*. at § 10.608(b).

[6] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 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