

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

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**R.S., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Greensboro, NC,  
Employer**

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**Docket No. 07-1698  
Issued: December 18, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 11, 2007 appellant filed a timely appeal from the March 14, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying further merit review of his occupational disease claim. The most recent merit decision in this case was issued on February 10, 2006. Because appellant filed his appeal more than one year after this merit decision, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has no jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128.

**FACTUAL HISTORY**

On October 14, 2003 appellant, then a 50-year-old mail handler, filed an occupational disease claim, alleging that his fingers and hands were numb and weak because of the repetitive motion involved in operating equipment and pulling containers. He submitted reports from a physician's assistant stating that he had pain in both wrists.

On December 16, 2003 the Office denied appellant's claim on the grounds that the medical evidence he provided diagnosed only pain, which was not adequate to establish his claim. The Office accepted that repetitive wrist motions were part of appellant's duties.

On January 14, 2004 appellant requested an oral hearing, which was held on October 26, 2004. On January 17, 2005 the Office received medical evidence from appellant's treating physician, Dr. Anthony Defranzo. He stated that appellant was experiencing numbness, tingling and pain in both hands. On examination, appellant had an equivocal Phalen's test, an equivocal reversed Phalen's test and tenderness over the first carpometacarpal joint of the left hand. Dr. Defranzo diagnosed possible early carpal tunnel syndrome, which he found to be job related and early carpometacarpal joint dysfunction at the base of the left thumb.

By decision dated January 19, 2005, the Office hearing representative affirmed the denial of appellant claim. He noted that no new medical evidence had been received.

On January 8, 2006 appellant requested reconsideration. He contended that the Office hearing representative did not review Dr. Defranzo's report.

By decision dated February 10, 2006, the Office denied modification of the January 19, 2005 decision. The Office found that Dr. Defranzo's report provided no firm diagnosis or objective findings of carpal tunnel syndrome.

On February 3, 2007 appellant requested reconsideration. He submitted photographs of his hands in two positions on a piece of equipment.

By decision dated March 14, 2007, the Office denied reconsideration of the merits of appellant's claim on the grounds that he had submitted no relevant new evidence.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.<sup>1</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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>2</sup> Section 10.608(b) provides that, when an application for reconsideration 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>3</sup>

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<sup>1</sup> 5 U.S.C. § 8128(a).

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

<sup>3</sup> 20 C.F.R. § 10.608(b).

### **ANALYSIS**

The Board finds that appellant met none of the regulatory requirements for a review of the merits of the Office's February 10, 2006 decision. His February 3, 2007 request for reconsideration included two photographs showing his hands grasping the handle of some machinery. The Board finds that this evidence is irrelevant to the issue of whether the accepted employment factors were the cause of his alleged condition, which must be established by medical evidence. Therefore, the Board finds that he is not entitled to further review on the merits of his case under the last subsection of section 10.606(b)(2).<sup>4</sup>

Appellant also did not show that the Office erroneously applied or interpreted a specific point of law and did not advance any relevant legal arguments. The Board therefore finds that he is not entitled to further review on the merits of his case under the first two subsections of section 10.606(b)(2).<sup>5</sup>

### **CONCLUSION**

The Board finds that the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 14, 2007 is affirmed.

Issued: December 18, 2007  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2)(iii).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii).