

<sup>2</sup> On appeal, appellant submitted new medical evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). The Board may not consider this evidence for the first time on appeal.

## **FACTUAL HISTORY**

On November 12, 2003 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on that date she was struck by a door while leaving the building, thereby sustaining a knot on the right side of her head and a swollen right wrist and hand. On January 21, 2004 the Office accepted her claim for postconcussion syndrome with headaches and intermittent dizziness. It paid medical benefits and wage-loss compensation. By decision dated March 18, 2008, the Office denied appellant's claim for a schedule award and on May 7, 2008 it denied her request for reconsideration.

On April 3, 2009 appellant filed a claim alleging a recurrence of the November 12, 2003 employment injury on February 21, 2009. She noted that she still had neck and shoulder pain, headaches, dizziness and issues with balance. In support thereof, appellant submitted medical evidence, including a May 12, 2009 report by Dr. Lolita Smith, an internist, wherein she noted that appellant told her about her work-related injury on November 12, 2003. Dr. Smith noted that appellant had recurrent complaints of headache, hand numbness, pain in both elbows and bilateral decreased hand grip. She noted that appellant's recent magnetic resonance imaging (MRI) scan was consistent with herniated cervical disc with radiculopathy. Dr. Smith noted that this type of progression can be seen in appellants with "this type of injury history."

By decision dated May 26, 2009, the Office denied appellant's claim for a recurrence.

On August 24, 2009 appellant requested reconsideration. She did not submit any new evidence with her request.

On September 21, 2009 the Office denied appellant's request for reconsideration without conducting a merit review.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> 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.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>5</sup> 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.<sup>6</sup>

---

<sup>3</sup> 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).

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

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

### **ANALYSIS**

The Office accepted that appellant sustained postconcussion syndrome with headaches and intermittent dizziness in a November 12, 2003 employment injury. Appellant claimed that she sustained a recurrence of this accepted injury on February 21, 2009. The Office denied her claim for a recurrence in its May 26, 2009 decision. However, as appellant's appeal was filed more than 180 days after the issuance of this decision, the Board does not have jurisdiction to review the merits of this case.<sup>7</sup> The only issue in this case is whether the Office properly denied appellant's request for reconsideration.

Appellant did not make any new arguments that the Office erroneously applied or interpreted a specific point of law nor did she advance a relevant legal argument not previously considered by the Office. Furthermore, she did not submit any pertinent new and relevant evidence with her request for reconsideration. Accordingly, the Board finds that appellant did not meet any of the standards of 20 C.F.R. § 10.606(b)(2). Therefore, the Office properly denied the application for reconsideration without review of the merits of the claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim under 5 U.S.C. § 8128(a).

---

<sup>7</sup> See *supra* note 1.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 21, 2009 is affirmed.

Issued: December 15, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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