

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

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**MARY L. GROVES, Appellant**

**and**

**U.S. POSTAL SERVICE, CAMERON VILLAGE  
POST OFFICE, Raleigh, NC, Employer**

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**Docket No. 04-212  
Issued: March 26, 2004**

*Appearances:*  
*Mary L. Groves, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On October 29, 2003 appellant filed a timely appeal from the August 6, 2003 decision of the Office of Workers' Compensation Programs denying her request for reconsideration without a review of the merits pursuant to 5 U.S.C. § 8128(a). Because more than one year has elapsed between the last merit decision dated January 24, 2002 and the filing of this appeal on October 29, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On January 27, 2001 appellant, then a 44-year-old window clerk, filed a traumatic injury claim alleging that on January 8, 2001 she experienced numbness, weakness of the left arm and

leg and severe headaches. Appellant stopped work on January 9, 2001 and she has not returned to work.

In an accompanying statement, appellant provided a description of her injuries and resulting symptoms and medical reports from her treating physicians concerning her injuries. The employing establishment submitted a January 18, 2001 statement from Celestine D. Simpson, a customer service supervisor, and a February 1, 2001 memorandum from Deborah Knight, an injury compensation specialist, controverting appellant's claim on the grounds that a discrepancy existed concerning the nature of appellant's injury.

By decision dated March 26, 2001, the Office found the evidence of record insufficient to establish that appellant actually experienced the accident, event or employment factor alleged to have occurred. The Office further found the evidence of record insufficient to establish that appellant sustained a work-related medical condition.

Appellant requested an oral hearing before an Office hearing representative by letter dated April 25, 2001. She submitted medical treatment notes along with her request. Prior to and subsequent to the October 24, 2001 hearing, the Office received additional medical evidence.

In a January 24, 2002 decision, the hearing representative found the medical evidence of record insufficient to establish that appellant sustained an injury due to the January 8, 2001 employment incident. Accordingly, the hearing representative affirmed the Office's March 26, 2001 decision.

On February 13, 2002 the Office received a January 8, 2002 letter of Dr. Dan Richard, a Board-certified family practitioner, reiterating findings in his November 4, 2001 letter that appellant had been unable to work since January 8, 2001 when she sustained a work-related injury, she underwent several consultations with many specialists and multiple tests while under his care and she had conversion disorder. He also diagnosed fibromyalgia and reiterated his previous opinion that, due to appellant's continued symptoms of extremity pain, weakness and numbness, she was unable to sit or stand for extended periods of time and, therefore, she could not work.

On January 24, 2003 appellant requested reconsideration. Along with her request, appellant submitted a January 23, 2003 letter from Dr. Josephine Brown, a Board-certified family practitioner, revealing a history that she had been her patient since March 14, 2002, and a diagnosis of fibromyalgia with associated chronic pain with associated severe depression, which prevented her from performing her daily activities. Dr. Brown noted that fibromyalgia was a new and complex disease and the pain syndrome could be debilitating. Accompanying this letter was a copy of the preface of a medical book regarding the diagnosis of fibromyalgia syndrome and treatment for this condition.

By decision dated August 6, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was either cumulative or irrelevant in nature, and thus, insufficient to warrant modification of its prior decision.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>1</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>2</sup> Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.<sup>3</sup>

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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>5</sup>

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>6</sup>

### **ANALYSIS**

With her request for reconsideration, appellant submitted Dr. Richard's January 8, 2002 letter. Although he diagnosed a new condition, fibromyalgia, his report is cumulative of evidence already considered by the Office hearing representative in his January 24, 2002 decision. The Board has found that evidence, which repeats or duplicates evidence already in the record, has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup>

Dr. Brown's January 23, 2003 letter finding that appellant had fibromyalgia with associated chronic pain with associated severe depression, which prevented her from performing her daily activities is irrelevant as it failed to address the issue in this case, whether appellant sustained an injury caused by the January 8, 2001 employment incident. Thus, it is insufficient to require the Office to reopen appellant's claim for merit review.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>3</sup> *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

<sup>4</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>5</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> *Paul Kovash*, 49 ECAB 350 (1998).

Dr. Brown submitted a copy of the preface of a medical book regarding the diagnosis of fibromyalgia syndrome and treatment for this condition; however, the Board has found that excerpts of medical publications are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions were the result of particular circumstances of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on causal relationship between a diagnosed condition and specified employment factors.<sup>8</sup> As Dr. Brown did not interpret the literature, it is of no probative value and is not sufficient to require the Office to reopen appellant's case for a review of the merits of her claim.

### **CONCLUSION**

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office, the Board finds that the Office properly denied appellant's request for a merit review of her claim pursuant to section 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Harlan L. Soeten*, 38 ECAB 566 (1987).