

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

HENRIETTA P. HARDAWAY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
CINCINNATI BULK MAIL CENTER,
Cincinnati, OH, Employer**

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**Docket No. 05-1725
Issued: February 7, 2006**

Appearances:
Henrietta P. Hardaway, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 16, 2005 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated May 11, 2005, denying her request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated March 25, 2004 and the filing of this appeal on August 16, 2005, 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 refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the third appeal before the Board. On April 10, 1987 appellant, then a 33-year-old keyer-clerk, filed a claim for bilateral carpal tunnel syndrome. The Office accepted the claim for muscle strain of the left arm, aggravation of preexisting degenerative cervical disc disease at C5

and bilateral carpal tunnel syndrome. In an August 15, 2000 decision, the Board affirmed the Office's May 5, 1998 and January 8, 1999 decisions, which denied reconsideration and an untimely request for reconsideration, which lacked clear evidence of error.¹ In an October 30, 2003 decision, the Board found that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits effective June 10, 1996. The Board affirmed the Office's August 28 and November 19, 2002 and April 1, 2003 decisions.² The facts of this case as sets forth in the Board's prior decisions are herein incorporated by reference.

Appellant requested reconsideration in a letter dated February 5, 2004 and submitted a January 2, 2003 medical report from Dr. Raul Florez, a Board-certified orthopedic surgeon. By decision dated March 25, 2004, the Office denied modification of the October 30, 2003 decision. Evidence received after the Office's March 25, 2004 decision included another copy of Dr. Florez' January 2, 2003 report and copies of appellant's reconsideration requests dated January 24 and June 26, 2003 and a June 27, 2003 appeal request to the Board.

By letter dated March 22, 2005, appellant requested reconsideration. Appellant stated that her reconsideration request would be based on medical evidence provided by Dr. Minhas of Freiber Orthopaedics, who would complete a medical narrative when he returned on March 28, 2005. She requested that the Office grant her an extension to obtain a medical report.

By decision dated May 11, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office noted that "[a]s a courtesy, immediate action was not taken on your reconsideration request to allow time for the submittal of the promised medical report. However, at present, well over 45 days has elapsed and this medical report still has not been received."

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,³ the Office's regulations provide that 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.⁴ 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.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the

¹ Docket No. 99-1452 (issued August 15, 2000).

² Docket No. 03-1754 (issued October 30, 2003).

³ 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).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

case for review of the merits.⁶ 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 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁷

ANALYSIS

As previously noted, the only decision before the Board in this appeal is the decision of the Office dated May 11, 2005, denying appellant's application for review.

The relevant issue in this case is a medical one, whether appellant had any continuing work-related disability or residuals on or after June 10, 1996. Appellant did not contend that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office with respect to the issue at hand. Rather, she noted in a March 22, 2005 letter, that she expected that a medical narrative from Dr. Minhas would be forthcoming after March 28, 2005. The record reflects, however, that the Office never received any medical report from Dr. Minhas. The Board notes that the Office had received evidence after the issuance of its March 25, 2004 decision, which consisted of copies of appellant's previous letters requesting reconsideration and a January 2, 2003 medical report from Dr. Florez, which was previously of record and previously reviewed. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸

For the foregoing reasons, 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 any relevant and pertinent new evidence not previously considered by the Office. Accordingly, the Office properly denied her request for reconsideration.

CONCLUSION

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

⁶ 20 C.F.R. § 10.608(b); *Betty A. Butler*, 56 ECAB ____ (Docket No. 04-2044, issued May 16, 2005); *Candace A. Karkoff*, 56 ECAB ____ (Docket No. 05-677, issued July 13, 2005).

⁷ *Annette Louise*, 54 ECAB 783 (2003).

⁸ *Brent A. Barnes*, 56 ECAB ____ (Docket No. 04-2025, issued February 15, 2005); *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2005 is affirmed.

Issued: February 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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