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MICHAEL G. CHANCE, Appellant)	
)	
and)	Docket No. 05-1985
)	Issued: January 4, 2006
U.S. POSTAL SERVICE, WEST SURBURBAN)	
POST OFFICE, Clive, IA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On September 17, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated June 1, 2005 which denied merit review. Because more than one year has elapsed between the last merit decision of the Office dated May 26, 2004 and the filing of this appeal on September 17, 2005, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

The issue is whether the Office properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

On April 3, 2004 appellant, then a 43-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that on April 2, 2004 he injured his left elbow while exiting a postal vehicle. He stopped work at 1:30 p.m. that afternoon and returned to duty at 7:00 a.m. the next day. In support of his claim, he submitted discharge instructions from Mercy Medical Center

indicating that he had been treated on April 2, 2004, and a duty status report in which an osteopathic physician¹ stated that appellant should be reevaluated in four days and provided restrictions to his physical activity.

By letter dated April 12, 2004, the Office informed appellant of the evidence needed to support his claim and gave him 30 days to respond. In a decision dated May 26, 2004, the Office denied the claim, noting that appellant did not respond to its April 12, 2004 letter.

On May 18, 2005 appellant requested reconsideration and provided a statement in which he described the circumstances of the April 2, 2004 injury. He noted that he had recently received bills from the hospital which he assumed had been paid by the employing establishment. In a decision dated June 1, 2005, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.³ 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).⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵ 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 on the merits.⁶

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated June 1, 2005 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated May 26, 2004, and the

¹ The physician's signature is illegible.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.608(a).

⁵ 20 C.F.R. § 10.608(b)(1) and (2).

⁶ 20 C.F.R. § 10.608(b).

filing of his appeal with the Board on September 17, 2005, the Board lacks jurisdiction to review the merits of his claim.⁷

With his May 18, 2005 reconsideration request, appellant submitted no new argument but provided a description regarding how the elbow injury occurred. He did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).⁸ Furthermore, with respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence.⁹ Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2005 be affirmed.

Issued: January 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁷ 20 C.F.R. § 501.3(d)(2).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ The Board, however, notes that appellant submitted additional medical evidence with his appeal to the Board. The Board, however, cannot consider this evidence as its review of the record is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).