

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

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**JIMMIE D. JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kingsport, TN, Employer**

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**Docket No. 05-571  
Issued: May 10, 2006**

*Appearances:*

*George Todd East, Esq., for the appellant*

*Thomas G. Giblin, Esq., for the Director*

Oral Argument April 19, 2006

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 10, 2005 appellant filed a timely appeal from the December 15, 2004 nonmerit decision of the Office of Workers' Compensation Programs, which denied his March 17, 2004 request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review this denial. The Board has no jurisdiction to review the merits of appellant's claim because more than one year has elapsed since the Office's most recent merit decision on March 25, 2003.

**ISSUE**

The issue is whether the Office properly denied appellant's March 17, 2004 request for reconsideration.

**FACTUAL HISTORY**

On July 23, 2001 appellant, then a 53-year-old mail carrier, filed a claim alleging that he herniated his L4-5 disc and damaged a sciatic nerve on May 31, 2001 while in the performance of duty. He explained that it was raining and he "fell on slick fig leaf."

In a decision dated February 11, 2002, the Office denied appellant's claim for compensation: "The evidence in your case verifies that on some date while doing your duties you did fall while on your route. However, given the inconsistencies in your statements and actions, the evidence fails to establish you sustained an injury as claimed on May 31, 2001." The Office listed 10 circumstances that it believed were inconsistent with an injury on May 31, 2001, including a seven-week delay in filing the claim, inconsistent accounts and appellant's failure to mention a fall at work during emergency room visits on June 9 and 16, 2001.

Appellant, through his attorney, requested reconsideration on November 26, 2002. He addressed the 10 circumstances listed by the Office and clarified that appellant fell at work on June 5, 2001, not on May 31, 2001.

In a decision dated March 25, 2003, the Office changed the date of the alleged injury from May 31 to June 5, 2001, but denied modification of its prior decision. The Office found that there were still discrepancies in the alleged facts. Appellant stated that after his fall he returned to the post office and advised his supervisor that he was leaving work to go to the emergency room. However, there was no record of an emergency room visit that date. Given his preexisting back condition, the Office found that his doctor had to explain how the incident in question affected appellant's underlying condition.

On March 17, 2004 appellant's attorney again requested reconsideration. He explained that appellant experienced minor backaches and pain prior to June 5, 2001, but his symptoms and condition were made worse after the June 5, 2001 fall, resulting in a left L4-5 herniated disc with left L5 radiculopathy. Counsel indicated that he was enclosing a summary of this event signed by coworkers, David Hicks and Jeff Brewer. Also enclosed, he stated, was a list of postal employees, by their signatures, who witnessed and were aware of appellant's working with back pain prior to June 5, 2001. Appellant's attorney added that he was also enclosing a January 6, 2004 fitness-for-duty evaluation.

In a decision dated April 8, 2004, the Office denied appellant's March 17, 2004 request as untimely because it was not received until March 30, 2004, more than a year after the Office's March 25, 2003 decision. The Office further found that appellant failed to demonstrate clear evidence of error in that decision.

In a decision dated November 26, 2004, the Board set aside the Office's April 8, 2004 decision and remanded the case for further action. The Board found that appellant's March 17, 2004 request for reconsideration was in fact timely and therefore warranted application of a different standard of review. The Board noted at footnote 10 of its decision that, although the March 17, 2004 request for reconsideration indicated that additional evidence was enclosed, no such evidence was in the record.

Upon return of the case record, the Office issued a decision on December 15, 2004 denying appellant's March 17, 2004 request for reconsideration. The Office explained that this request did not meet any of the three standards for obtaining a merit review of his case.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>1</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>2</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (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.<sup>3</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

Appellant's March 17, 2004 request for reconsideration does not meet at least one of the standards for obtaining a merit review of his case. He did not allege or show that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. He is therefore not entitled to a merit review of his case under the first or second standard above.

Appellant attempted to obtain a merit review of his case by submitting additional evidence. The March 17, 2004 request for reconsideration indicated that additional evidence was enclosed: a summary of the event signed by coworkers, Mr. Hicks and Mr. Brewer; a list of postal employees, by their signatures, who witnessed and were aware of appellant's working with back pain prior to June 5, 2001; and a January 6, 2004 fitness-for-duty evaluation. The Board noted in its prior decision that this evidence was not in the record. The Board has again

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.605 (1999).

<sup>3</sup> *Id.* at § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

reviewed the record and can find no trace of these enclosures. Appellant's March 17, 2004 request for reconsideration contained no relevant and pertinent new evidence not previously considered by the Office. For that reason, he is not entitled to a merit review of his case under the third standard above.

Because appellant's March 17, 2004 request for reconsideration fails to meet at least one of the applicable standards, the Board finds that the Office properly denied the application without reopening the case for a review on the merits.<sup>6</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's March 17, 2004 request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 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

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<sup>6</sup> On appeal, appellant submits as "Exhibit A" his January 3, 2005 account of what happened on and after June 5, 2001. Because this evidence was not before the Office at the time of its December 15, 2004 decision, which is the final decision from which this appeal is taken, the Board has no jurisdiction to consider it for the first time on appeal. 20 C.F.R. § 501.2(c) (the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).