

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

J.M., Appellant

and

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

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**Docket No. 07-1820
Issued: December 26, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 28, 2007 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its April 20, 2006 decision denying appellant's claim for wage-loss benefits. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.¹

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record also contains a November 2, 2006 decision of the Board affirming the Office's denial of appellant's claim for wage-loss benefits. In the absence of further review by the Office on the issue addressed by the decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

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 case is before the Board for the second time. The Office accepted appellant's March 8, 2004 traumatic injury claim for a lumbar strain. Appellant returned to work on May 19, 2004. She submitted a claim for lost wages for the period September 12 to October 18, 2005. On November 2, 2006 the Board affirmed the Office's December 15, 2005 and April 20, 2006 decisions denying appellant's claim for wage-loss benefits and a May 26, 2006 decision denying her request for reconsideration.² The Board found that, although appellant had submitted numerous medical reports from her treating physician, Dr. Moacir Schnapp, she had not submitted any reasoned medical opinion to show that she was disabled during the claimed period of time due to her accepted employment injury. The findings of fact and conclusions of law are incorporated herein by reference.

On March 14, 2007 appellant again requested reconsideration of her claim. She stated that she was submitting additional documentation, which established that she was totally disabled from August 29 to October 18, 2005 due to her work injury.

In a February 13, 2007 memorandum to the Office, Dr. Schnapp opined that there was "reliable and probative evidence" that there was a causal relationship between appellant's March 6, 2004 injury and her period of disability from August 29 to October 18, 2005. Attached to his memorandum was a February 13, 2007 report reflecting that he had examined appellant on that date for continuing intermittent pain in her lower back. D. Schnapp provided a checklist of his examination findings and diagnosed lumbar spondylosis and sacroiliitis. He stated that he explained to appellant that the diagnosis for her low back condition overlapped with spondylosis, lumbar strain and degenerative joint disease.

By decision dated March 28, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review. The Office found that Dr. Schnapp's February 13, 2007 report provided no medical rationale to support the alleged period of disability and was substantially similar to evidence of record that had been previously considered.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or

² Docket No. 06-1729 (issued November 2, 2006).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

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 case for review on the merits.⁶ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

Appellant's March 14, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted a February 13, 2007 medical report from Dr. Schnapp, who opined that there was "reliable and probative evidence" that there was a causal relationship between her March 6, 2004 injury and her period of disability from August 29 to October 18, 2005. Dr. Schnapp reported that he had examined appellant on that date for continuing intermittent pain in her lower back and provided a checklist of his examination findings and diagnoses of lumbar spondylosis and sacroiliitis. He stated that he explained to appellant that the diagnosis for her low back condition overlapped with spondylosis, lumbar strain and degenerative joint disease. However, Dr. Schnapp did not address the relevant issue, namely, how the accepted employment event caused appellant's disability during the period in question. Although he stated that, an opinion regarding causal relationship, he did not provide a rationalized explanation for his opinion. Dr. Schnapp's report merely reiterated information contained in documents previously received and reviewed by the Office and is, therefore, cumulative and duplicative in nature.⁸ The Board finds that his report does not constitute relevant and pertinent new evidence not previously considered by the Office.⁹ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

⁹ *See Susan A. Filkins*, 57 ECAB ____ (Docket No. 06-868, issued June 16, 2006).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 14, 2007 request for reconsideration.

CONCLUSION

The Board finds that 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).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 26, 2007
Washington, DC

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

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

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