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J.W., Appellant)	
)	
and)	Docket No. 06-1531
)	Issued: January 5, 2007
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On June 20, 2006 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs, dated March 15, 2006, denying his request for reconsideration. Because more than one year has elapsed between the last merit decision dated December 18, 2002 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

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

This case has previously been on appeal before the Board. In a December 13, 2004 decision, the Board affirmed a March 15, 2004 Office decision denying appellant's request for

reconsideration.¹ The law and the facts as set forth in the Board's prior decision, are hereby incorporated by reference.²

In a letter dated December 9, 2005, appellant requested reconsideration of his claim. He noted that he was still actively seeking information, files and medical/legal reports. No additional evidence was submitted.

By decision dated March 15, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Office last adjudicated the merits of appellant's February 13, 1998 injury on December 18, 2002. Appellant subsequently requested reconsideration, which the Office denied in a nonmerit March 15, 2004 decision. The Board, in its December 13, 2004 decision, affirmed the Office's March 15, 2004 decision denying appellant's request for reconsideration. On

¹ Docket No. 04-1655 (issued December 13, 2004).

² On March 13, 1998 appellant, a 50-year-old rural carrier, filed a traumatic injury claim alleging that on February 13, 1998 he experienced a heart condition after carrying parcels, lifting and moving trays of mail. By decision dated May 5, 1998, the Office denied the claim on the grounds that the medical evidence failed to establish causal relationship with factors of appellant's employment. Appellant requested reconsideration and alleged in an April 5, 2000 supplemental statement that job-related stress could have also been a contributing factor for his February 13, 1998 heart attack. By decision dated August 7, 2000, the Office denied modification of its previous decision and indicated that appellant's claim would be pursued as a traumatic injury as he had alleged that specific duties performed on February 13, 1998 contributed to his condition. Appellant requested reconsideration and in decisions dated September 18, 2001 and December 18, 2002, the Office denied modification of its previous decision. By decision dated March 15, 2004, the Office denied appellant's request for reconsideration, which the Board affirmed in its December 13, 2004 decision.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

December 9, 2005 appellant requested reconsideration. He did not support his request with relevant evidence not previously of record nor did he advance legal contentions not previously considered.

In this case, the Office denied appellant's claim that his heart condition was causally related to factors of his employment on February 13, 1998. In his December 9, 2005 letter requesting reconsideration, appellant advised that he was still pursuing information for his claim. He did not present any legal argument in support of his request. Consequently, he was 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) as his letter did not purport to show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.⁶

With respect to the third requirement under section 10.606(b)(2), appellant failed to provide any relevant and pertinent new evidence. He merely indicated that he was pursuing such evidence. Consequently, he is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(2).⁷

Accordingly, the Board finds that appellant was not entitled to a merit review of his claim as he did not meet any of the three regulatory criteria, noted above, for reopening his claim.

CONCLUSION

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

⁶ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

⁷ 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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