

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

R.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lompoc, CA, Employer**

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**Docket No. 07-1386
Issued: October 16, 2007**

Appearances:

Sally LaMacchia, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 25, 2007 appellant filed a timely appeal of a March 8, 2007 decision of the Office of Workers' Compensation Programs, denying merit review of her claim. Since more than one year has elapsed between the last Office merit decision on September 28, 2004 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), 501.3(d)(2) and 501.6(c) and (d).

ISSUE

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated June 9, 2006, the Board affirmed a September 28, 2004 Office decision.¹ The Board determined that appellant had not established total disability for the periods January 11 to May 3 and May 5 to 6, 2002, nor had she established a recurrence of disability commencing May 9, 2002. The accepted injury in this case was a temporary aggravation of spondylolisthesis at L5-S1. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By letter dated February 26, 2007, appellant requested reconsideration of her claim. She submitted an October 17, 2006 petition for reconsideration previously submitted to the Board.² Appellant argued that the issue was whether the Office erred in denying compensation without deciding job suitability.

In a decision dated March 8, 2007, the Office determined that the application for reconsideration was not sufficient to warrant merit review of the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. 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."³

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.⁴

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 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.⁵

¹ Docket No. 06-32 (issued June 9, 2006).

² The petition for reconsideration was untimely and the Board did not issue an order on the petition.

³ 20 C.F.R. § 10.605 (1999).

⁴ *Id.* at § 10.606(b)(2).

⁵ *Id.* at § 10.608.

ANALYSIS

The September 28, 2004 Office decision, affirmed by the Board in a June 9, 2006 decision, denied appellant's claims for compensation beginning January 11, 2002 on the grounds that the medical evidence did not establish total disability for the periods claimed. In addition, the Board found that the evidence did not establish a recurrence of disability commencing May 9, 2002. Appellant did not submit any relevant and pertinent evidence not previously considered by the Office. She did not submit any new medical evidence with respect to the claimed periods of disability.

Appellant appeared to argue that the Office erred in failing to consider job suitability, citing case law with respect to termination of benefits pursuant to 5 U.S.C. § 8106(c)(1).⁶ The instant case did not involve a termination of benefits on the grounds that appellant refused an offer of suitable work. The claims for compensation were denied on the grounds that the medical evidence failed to establish an employment-related disability for the periods claimed. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. Where the legal argument presented has no reasonable color of validity, the Office is not required to reopen the case for merit review.⁷

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 relevant and pertinent new evidence not previously considered by the Office. Pursuant to 20 C.F.R. § 10.608, the application for reconsideration is properly denied without merit review of the claim.

CONCLUSION

Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly denied the application for reconsideration without merit review of the claim.

⁶ Appellant cited *Charlene R. Herrera*, 44 ECAB 361 (1993); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

⁷ See *Norman W. Hanson*, 40 ECAB 1160 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2007 is affirmed.

Issued: October 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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