

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

J.Q., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 08-341
Issued: May 9, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 16, 2007 nonmerit decision denying his reconsideration request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's May 9, 2005 decision denying appellant's emotional condition claim. Because more than one year has elapsed between the last merit decision and the filing of this appeal on November 13, 2007, the Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

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).

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on August 2, 2006 in which it affirmed the May 9, 2005 decision of the Office on the grounds that appellant had not met his burden of proof to show that he sustained an employment-related emotional condition.² The Board affirmed the Office's finding that appellant had established an employment factor in the form of his reaction to pain from his accepted right shoulder injuries.³ The Board further found that the medical evidence, including the reports of Dr. Keith L. Rogers, an attending clinical psychologist, did not show that appellant sustained an emotional condition due to the accepted employment factor.⁴ The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In a July 31, 2007 letter received by the Office on August 1, 2007, appellant, through his attorney, requested reconsideration of his claim. Appellant submitted a September 1, 2006 report in which Dr. Rogers stated:

“I have seen [appellant] in Mental Health Clinic of the [Veterans Affairs] Puget Sound for a number of years. He suffers from recurrent major depressive disorder and he takes medication for this. He also suffers from chronic pain resulting from an on-the-job shoulder injury in 1996. It is widely and extensively recognized that chronic pain conditions contribute to, cause and exacerbate depressive conditions. This is the case for [appellant]; his chronic pain no doubt contributed to his major depression which persists to the present.”

In an August 16, 2007 decision, the Office denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).⁵

² Docket No. 06-806 (issued August 2, 2006).

³ On November 5, 2003 appellant, then a 52-year-old letter box mechanic, filed an occupational disease claim alleging that he sustained an emotional condition due to several incidents and conditions at work. The Board determined that appellant did not establish any employment factors other than the one relating to his employment-related right shoulder injuries.

⁴ In an October 21, 2003 report, Dr. Rogers stated, “We are aware of your employment with the United States Postal Service and have some knowledge of your assigned duties as a letter box mechanic. It is our opinion, your injuries and the difficulty performing your duties in the context of these injuries, contributed to developing depression.” In a March 21, 2005 report, Dr. Rogers stated, “We are aware of your employment with the United States Postal Service and have some knowledge of your assigned duties as a letter box mechanic.... As you relayed to us, you injured your right arm/shoulder initially in 1993 with reinjury of the same extremity in October 1996 and were subsequently diagnosed with depression in 1997 at Group Health. It is our opinion that the results of your physical injuries and the difficulty performing your duties in the context of these injuries, contributed to developing depression.”

⁵ Appellant submitted additional evidence after the Office's August 16, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or 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.⁷ 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.⁸ 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.⁹ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁰

ANALYSIS

In support of his timely August 1, 2007 reconsideration request,¹¹ appellant submitted a September 1, 2006 report of Dr. Rogers, an attending clinical psychologist. However, the submission of this report would not require reopening of appellant's claim as this report is similar to the previously submitted reports of Dr. Rogers, dated October 21, 2003 and March 21, 2005.¹² In each of these brief reports, Dr. Rogers indicated that pain from appellant's employment-related right shoulder condition contributed to his depression. Dr. Rogers' September 1, 2006 report did not provide any significantly greater level of discussion or explanation for this opinion than his prior reports.

Appellant has not established that the Office improperly denied his request for further review of the merits of its May 9, 2005 decision under section 8128(a) of the Act, because the evidence and argument he submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he 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).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.607(a). According to Office procedure, the one-year period for requesting reconsideration begins on the date of the original Office decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b (January 2004).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹¹ Appellant's request was within one year of the Board's August 2, 2006 merit decision and therefore would be considered timely. *See supra* note 8.

¹² *See supra* note 10 and accompanying text.

by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

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).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 16, 2007 decision is affirmed.

Issued: May 9, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board