

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

A.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bridgeview, IL, Employer**

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**Docket No. 09-1228
Issued: December 17, 2009**

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 April 9, 2009 appellant filed a timely appeal from the December 4, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether the Office properly denied appellant's October 30, 2008 request for reconsideration.

FACTUAL HISTORY

On September 20, 1982 appellant, then a 40-year-old letter carrier, sustained an injury in the performance of duty when, while carrying parcels and empty trays, he fell as he was about to enter a doorway. The Office accepted his claim for aggravation of lumbar myositis, superficial abrasion of the left knee (resolved) and central bulging of the L5-S1 disc. Appellant received compensation for disability.

In a decision dated December 18, 2007, the Office terminated appellant's compensation benefits based on the opinion of an impartial medical specialist, who found that appellant no longer had any medical condition or disability for work as a result of the September 20, 1982 work injury.¹

On October 30, 2008 appellant requested reconsideration. He cited case law for the general rule that, if medical treatment as a result of an employment injury causes further impairments, this would constitute a consequential injury. If the treatment or surgery causing a disability is not rendered directly to an employment-related injury, it is important to determine whether the treatment or surgery was authorized by the Office. Further, disability resulting from authorized treatment is compensable even if the treatment was not for an employment-related condition.

Appellant explained that the impartial medical specialist found him to be currently suffering residuals of the treatment he received for a long-standing degenerative disc disease unrelated to his work. According to the specialist, chymopapain injections dissolve the disc and commonly result in degenerative disc disease as well as instability at the treated levels.

In a decision dated December 4, 2008, the Office denied appellant's request for reconsideration. It found that the request neither raised substantive legal questions nor included new and relevant evidence.

On appeal appellant submitted copies of medical reports previously submitted. He also submitted a copy of the last four pages of his request for reconsideration.

LEGAL PRECEDENT

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.² The employee shall exercise this right through a request to the district Office.³

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request 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

¹ On May 2, 1986 the Office issued a formal wage-earning capacity decision, which the Board affirmed. Docket No. 92-747 (issued January 27, 1993). The Office modified its determination in part on January 11, 1999.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.605.

⁴ *Id.* at § 10.606.

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁵ 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 request for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Appellant sent his October 20, 2008 request for reconsideration within one year of the Office's December 18, 2007 decision terminating compensation benefits. His request is therefore timely. The question is whether this request meets at least one of the three standards for obtaining a merit review of his case.

Appellant advanced the argument that his authorized medical treatment caused a permanent and compensable consequential injury. The impartial medical specialist, on whose opinion the Office relied to terminate compensation, stated that chymopapain injections for the long-standing degenerative disc disease in appellant's lumbar spine "set off his progression of chronic pain and inability to work." Such injections, he explained, dissolve the disc and commonly result in degenerative disc disease as well as instability at the treated levels. The impartial medical specialist concluded that appellant currently had residuals of the treatment he received for his preexisting and nonwork-related degenerative disc disease.

This legal argument is relevant to appellant's entitlement to continuing compensation.⁷ Appellant received a chymopapain injection on May 21, 1984 for a disc herniation at L5-S1. The Office, which accepted a central bulging of the L5-S1 disc, paid for the injection. The impartial medical specialist explained that this treatment "set off" the progression of appellant's chronic pain and inability to work, causing permanent residuals that appellant continues to suffer. This is an argument the Office did not consider when it terminated compensation.

The Board finds that appellant is entitled to a merit review. Appellant's timely request for reconsideration advances a relevant legal argument not previously considered by the Office, thereby meeting at least one of the three standards for obtaining a merit review. The Board will reverse the Office's December 4, 2008 decision denying reconsideration and will remand the case for a merit review and an appropriate final decision on the December 18, 2007 termination of appellant's benefits.⁸

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608.

⁷ *See* Fed. R. Evid. 401 (relevant evidence defined).

⁸ Because a formal decision on wage-earning capacity remains in place, the Office shall address the customary criteria for modifying a formal wage-earning capacity determination. *See Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

CONCLUSION

The Board finds that the Office improperly denied appellant's October 30, 2008 request for reconsideration. Appellant is entitled to a merit review of his case.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2008 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action in conformance with this decision.

Issued: December 17, 2009
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