

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

K.P., Appellant

and

**U.S. POSTAL SERVICE, CANAL STREET
STATION, New York, NY, Employer**

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**Docket No. 09-866
Issued: October 19, 2009**

Appearances:

*Alan J. Shapiro, 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 February 12, 2009 appellant, through his representative, filed a timely appeal from the January 2, 2009 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 that denial.

ISSUE

The issue is whether the Office properly denied appellant's September 10, 2008 request for reconsideration.

FACTUAL HISTORY

On July 21, 2008 appellant, then a 53-year-old mail carrier, filed a claim alleging that he sustained an injury in the performance of duty on July 16, 2008 when he was assaulted by four teenagers outside his employing establishment vehicle.

In a decision dated September 4, 2008, the Office found that the factual component of "fact of injury" was established, but denied appellant's claim because there was no medical evidence from his physician providing a diagnosis of a condition and an explanation of how the

incident caused it. It noted illegible hand-written progress notes, diagnostic tests, emergency room discharge records and a return to work slip, a prescription for another diagnostic test and physical therapy and a police report. However, the Office stated that the medical evidence contained no diagnosis provided by a physician and failed to provide a physician's opinion on how the incident caused the condition diagnosed.

On September 10, 2008 appellant completed an appeal request form indicating that he was requesting reconsideration. The form contained the following instructions for requesting reconsideration: "Submit your request within one calendar year of the date of the decision. You must state the grounds upon, which reconsideration is being requested. Your request must also include relevant new evidence or legal argument not previously made."

In a decision dated January 2, 2009, the Office denied appellant's request for reconsideration. It found appellant's request insufficient to warrant a merit review of the case because he did not include any new and relevant medical evidence. Appellant's representative asks this Board to review the Office's January 2, 2009 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹ 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."²

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.³

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁴ 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

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.605.

³ *Id.* at § 10.606.

⁴ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant sent his September 10, 2008 request for reconsideration within one year of the Office's September 4, 2008 decision to deny his claim for compensation. His request is, therefore, timely. The question that remains is whether the request meets at least one of the three standards for obtaining a merit review.

Appellant's request for reconsideration is insufficient on its face to require the Office to reopen his case. He simply indicated with a checkmark on the appeal request form that he was requesting reconsideration. Appellant provided no grounds. He did not attempt to show that the Office erroneously applied or interpreted a specific point of law. Appellant advanced no legal argument. However, he submitted no evidence.⁶

Because appellant's September 10, 2008 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of his case, the Board finds that the Office properly denied his request. The Board will affirm the Office's January 2, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's September 10, 2008 request for reconsideration.

⁵ *Id.* at § 10.608.

⁶ On the same day the Office received appellant's request for reconsideration, it also received a July 18, 2008 letter from an assistant corporation counsel for the Family Court Division in the city Law Department, which confirmed an appointment to speak with him about the assault because his office was preparing to prosecute the juveniles. If this evidence accompanied appellant's request for reconsideration, it is not relevant and pertinent evidence. It denied his claim for want of sufficient medical evidence and the July 18, 2008 correspondence does not constitute medical evidence and does not address the medical deficiencies the Office found in his claim.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2009
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