

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

J.M., Appellant)
)
and)
)
U.S. POSTAL SERVICE, POST OFFICE,)
Birmingham, AL, Employer)
_____)

**Docket No. 09-2215
Issued: May 14, 2010**

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 September 2, 2009 appellant filed a timely appeal from a March 4, 2009 nonmerit decision denying his reconsideration request. The most recent merit decision of record is dated December 22, 2008. An appeal of the Office of Workers' Compensation Programs' decisions issued on or after November 19, 2008 must be filed within 180 days. Under 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board does not have jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On October 24, 2008 appellant, a 71-year-old mail handler, filed an occupational disease claim (Form CA-2) for a ruptured muscle that he alleged developed while performing his employment duties. He submitted supplemental statements to the record wherein he described

the repetitive arm movements he was required to perform up to 400 times a day in preparing magazine bundles for processing.

Appellant submitted a July 10, 2008 note in which Dr. Howard G. Miller, a Board-certified orthopedic surgeon, provided work restrictions, as well as narrative medical reports from Dr. Miller dated August 12, 26 and September 16, 2008 wherein he reviewed appellant's examination findings and diagnosed right rotator cuff tear, with joint arthritis and biceps tear of the right arm.

In a written statement dated November 15, 2008, a co-employee corroborated the repetitive duties of the pallet throw-off operator.

By decision dated December 22, 2008, the Office denied the claim because the evidence of record did not demonstrate that the established employment factors caused a medically diagnosed condition.

On December 29, 2008 the Office received five additional statements from co-employees who described the repetitive motions required by their jobs and their own medical conditions which they related were caused by their work activities.

On February 19, 2009 appellant requested reconsideration.

Appellant submitted an undated statement in which he describes his injury as a ruptured bicep and torn right rotator cuff and asserts that these conditions were caused by his employment duties. He submitted an undated statement describing his employment history.

Appellant submitted a copy of Dr. Miller's July 10, 2008 note upon which appellant wrote that he took two weeks' "leave" due to shoulder pain.

By decision dated March 4, 2009, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.² The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8128(a).

³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ 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.⁵ 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.⁶ 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.⁷

ANALYSIS

Appellant's reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by the Office. Therefore, he is not entitled to a review of the merits of his claim based upon the first and second above-noted requirements under section 10.606(b)(2).⁸

Furthermore, appellant did not submit relevant and pertinent new evidence with his February 19, 2009 reconsideration request. The issue underlying his claim is causal relationship, which requires demonstrating that the identified employment factors caused a medically diagnosed condition. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. With his reconsideration request, appellant submitted personal statements as well as statements from coworkers. The Board has long held that evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.⁹ Accordingly, appellant's lay opinion¹⁰ as well as those of his coworkers are not relevant and provide no basis for reopening appellant's claim for merit review.¹¹

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 constitute new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *Id.* at § 10.606(b)(2)(i) and (ii).

⁹ *Betty A. Butler*, 56 ECAB 545 (2005).

¹⁰ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹¹ *Gloria J. McPherson*, 51 ECAB 441 (2000).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2010
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