

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

G.S., Appellant)

and)

U.S. POSTAL SERVICE, BULK MAIL)
CENTER, Atlanta, GA, Employer)

**Docket No. 10-1502
Issued: April 20, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 12, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 26, 2010 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision was a May 18, 2009 Office decision concerning the denial of appellant's consequential injury claim. Because more than 180 days elapsed between the Office's last merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a September 14, 2004 decision, the Board affirmed the Office's August 25, 2003 decision terminating appellant's compensation, effective September 25, 2002, on the grounds that she refused an offer of suitable work.² The Board found that the medical opinion of Dr. Joseph I. Hoffman, Jr., an attending Board-certified orthopedic surgeon, established that she was capable of performing the offered job. The Board further found that appellant's reasons for refusing the job were not valid and there was no medical evidence to establish that she was unable to perform the offered job. The facts and the history relevant to the present appeal are hereafter set forth.³

On February 13, 2006 appellant's counsel requested that appellant's claim be accepted for depression. In a January 30, 2006 report, Dr. William H. Carter, Jr., a treating physician, who diagnosed major depression due to her carpal tunnel syndrome and her treatment by the employing establishment.

On January 29, 2007 appellant filed an occupational disease claim alleging that her major depression was due to the frustration and anxiety she experienced due to her bilateral carpal tunnel condition.

Appellant subsequently submitted a statement regarding the cause of her depression and treatment notes for the period July 31, 2002 through January 30, 2006 from Dr. Carter. On July 8, 2002 Dr. Carter diagnosed recurrent major depression with no psychotic features. On May 27, 2003 he diagnosed major depression without psychotic features. Dr. Carter noted that appellant's depression worsened due to her noncompliance with treatment following financial and other problems as well as her disability compensation issues. On November 14, 2003 he diagnosed major depression and noted that her hostility and anger stem from her financial difficulties and the denial of disability compensation issues. On January 30, 2006 Dr. Carter attributed appellant's major depression to her bilateral carpal tunnel employment injury. He stated that her depression resulted from worry, anxiety and her frustration with her perception of her treatment by the employing establishment.

By decision dated July 23, 2008, the Office denied appellant's request to accept the consequential injury of depression.

On August 1, 2008 appellant requested an oral hearing before an Office hearing representative, which occurred on November 3, 2008.

By decision dated January 15, 2009, the Office hearing representative affirmed the denial to expand appellant's claim to include the consequential injury of depression.

² Docket No. 04-189 (issued September 14, 2004).

³ On April 23, 1997 appellant, then a 40-year-old clerk, filed an occupational disease claim alleging that her bilateral carpal tunnel syndrome was employment related. The Office accepted the claim for bilateral carpal tunnel syndrome on January 20, 2000. Appellant stopped work in August 1997 and retired on disability in September 1997. By decision dated July 9, 2002, the Office modified the date of onset for her carpal tunnel syndrome to March 9, 1992.

Subsequent to the Office's denial, it received a September 29, 2000 report from Dr. Stephen Snook, a treating licensed psychologist, who diagnosed major depression and noted that appellant was currently in receipt of medical disability retirement compensation.

On March 26, 2009 counsel requested reconsideration and submitted a March 24, 2009 statement by Dr. Carter, who diagnosed major depression and bilateral carpal tunnel syndrome and noted that appellant had been totally disabled since August 1997. Dr. Carter attributed appellant's depression to her bilateral carpal tunnel condition. He noted her low self-esteem, self-concept and anger about her treatment by the employing establishment.

By decision dated May 18, 2009, the Office denied modification of the prior decisions.

On June 28, 2009 appellant requested reconsideration. In support of her claim, she submitted statements from her brother and Andrea M. Bernard attesting to her depression and the impact of her bilateral carpal tunnel syndrome on her depression.

By decision dated July 9, 2009, the Office denied appellant's request for reconsideration of the merits.

The Office subsequently received additional medical records dated February 3, 2003 through September 3, 2009 concerning appellant's carpal tunnel condition from her treating physicians and a September 3, 2009 electromyogram (EMG) report. In reports dated August 9 and September 4 2009, Dr. Bradley Henderson, a treating Board-certified orthopedic surgeon, provided findings from a physical examination and diagnosed bilateral carpal tunnel syndrome.

On December 8, 2009 appellant requested reconsideration and submitted a July 7, 2009 report from Dr. Joseph N. Saba, a treating Board-certified neurologist, who noted her injury history and that she had not worked since 1997. Dr. Saba diagnosed major depression due to her chronic pain, tension/chronic muscular contraction headache, chronic cervical syndrome, bilateral carpal tunnel syndrome, chronic lumbar syndrome, acid reflux and chronic persistent pain. He reported that appellant was tearful and noted she appeared to be having a difficult time with workers' compensation. In an October 2, 2009 report, Dr. W. Joseph Absi, a treating Board-certified orthopedic surgeon, diagnosed left carpal tunnel syndrome.

By decision dated March 26, 2010, the Office denied appellant's request for reconsideration of the merits.⁴

⁴ The Board notes that, following the March 26, 2010 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁵ the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.⁶ 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.⁷ 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.⁸

ANALYSIS

Appellant requested that her claim be accepted for consequential depression, which was denied by the Office in merit decisions dated July 23, 2008, January 15 and May 18, 2009. By decisions dated July 9, 2009 and March 26, 2010, the Office declined to reopen the case for further merit review

The Office denied appellant's claim due to the lack of rationalized medical evidence establishing a causal relationship between her accepted bilateral carpal tunnel syndrome and her depression. The Board finds that she did not advance a new legal argument or a point of law not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered, appellant submitted medical reports from Dr. Saba. On July 7, 2009 Dr. Saba diagnosed major depression due to her chronic pain, tension/chronic muscular contraction headache, chronic cervical syndrome, bilateral carpal tunnel syndrome, chronic lumbar syndrome, acid reflux and chronic persistent pain. The August 9 and September 4, 2009 reports of Dr. Henderson, as well as the October 2, 2009 report from Dr. Absi, all diagnosed bilateral carpal tunnel condition, but these reports are not relevant because the physicians did not

⁵ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁶ 20 C.F.R. § 10.606(b)(2); *Susan A. Filkins*, 57 ECAB 630 (2006). See *J.M.*, Docket No. 09-218 (issued July 24, 2009).

⁷ *Id.* at § 10.607(a); *Robert G. Burns*, 57 ECAB 657 (2006). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

⁸ *Id.* at § 10.608(b); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

address the issue of whether appellant's depression was a consequence of her accepted bilateral carpal tunnel syndrome. The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Appellant did not offer any relevant new evidence addressing the central issue of her claim. She is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2). The Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2010 is affirmed.

Issued: April 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁹ See *R.M.*, 59 ECAB 690 (2008); *D'Wayne Avila*, 57 ECAB 642 (2006); *David J. McDonald*, 50 ECAB 185 (1998).