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C.T., Appellant)	
)	
and)	Docket No. 10-1190
)	Issued: February 4, 2011
DEPARTMENT OF AGRICULTURE, FOOD)	
SAFETY INSPECTION SERVICE, Vienna, GA,)	
Employer)	
)	

Case Submitted on the Record

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

On March 16, 2010 appellant filed a timely appeal from an October 28, 2009 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Because more than 180 days elapsed from the most recent merit decision dated September 8, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹ The only decision properly before the Board is the nonmerit October 28, 2009 decision denying her request for reconsideration.

¹ For final adverse Office decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2). For final adverse Office decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On April 23, 2007 appellant, then a 26-year-old food inspector, filed a claim for an alleged back injury she sustained in the performance of duty on April 13, 2007. On June 20, 2007 the Office accepted her claim for lumbar sprain.

On June 15, 2009 the Office received appellant's recurrence of disability claim. Appellant alleged that on January 29, 2009 she sustained a recurrence of her accepted back condition. She explained that she returned to work but experienced pain in her lower back and left shoulder and could not sit or stand for longer than 20 minutes. Appellant stopped work on May 13, 2009 and returned on June 5, 2009.

Appellant submitted medical notes dated May 20 and June 5, 2009 which excused her from work from May 13 until June 1, 2009. In a June 5, 2009 letter, Dr. Eric N. Codner, a chiropractor, reported that appellant complained of low back and left shoulder pain. He noted that she had a guarded antalgic posture and reduced range of motion in the cervical spine with a positive cervical compression and distraction on the left side. Appellant was diagnosed with cervical disc displacement and cervical nerve root lesion. Dr. Codner stated that based on appellant's history her cervical condition resulted from her April 2007 work-related accident.

On June 22, 2009 the Office advised appellant that she needed to submit additional evidence to support her claim. It informed her that Dr. Codner's June 5, 2009 medical report did not provide her diagnostic test results and the record did not have any evidence of prior diagnostic testing of a cervical condition. The Office requested that appellant submit a detailed statement from her attending physician explaining the causal relationship between her claimed cervical condition to the original injury and a comprehensive medical report describing her symptoms, examination and test results, treatment provided and the effect of the treatment.

On August 11, 2009 the Office received a letter dated July 2, 2009 from Dr. Paul Baxt, an orthopedic surgeon, who noted appellant's complaints of low back, left leg, and left shoulder pain and mentioned her left shoulder work-related injury. Dr. Baxt observed significant loss of range of motion in appellant's cervical spine with forward flexion only at 15 degrees and limitation to forward flexion of the low back at 40 degrees. He stated that, due to appellant's peripheral symptomatology and significantly positive peripheral findings, he needed to conduct nerve conduction studies of the upper and lower extremities to make a diagnosis. Dr. Baxt also submitted a nerve conduction study dated July 2, 2009.

On August 21, 2009 the Office informed appellant that a medical report from Dr. Baxt should be submitted following diagnostic testing to explain the diagnosis of her condition. There was no response.

In a September 8, 2009 decision, the Office denied appellant's recurrence of disability claim based on insufficient evidence establishing that her current medical condition resulted from the accepted June 20, 2007 work injury.

On October 2, 2009 the Office received appellant's request for reconsideration. In an undated statement, appellant noted that her doctor's office had failed to submit her medical records but had since sent the records. She did not submit any medical evidence.

In an October 28, 2009 decision, the Office denied appellant's request for reconsideration on the grounds that she failed to submit relevant or pertinent evidence sufficient to warrant further merit review of the case.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether to review an award for or against compensation.² The Office's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.³

To require the Office to reopen a case for merit review pursuant to the Act, the claimant must provide evidence or an argument that: (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

A request for reconsideration must also be submitted 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 provided an argument that meets at least one of the requirements for reconsideration. If the Office chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely but fails to meet at least one of the requirements for reconsideration, the Office will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that the Office properly denied appellant's October 2, 2009 request for reconsideration because the request did not meet any of the requirements under 20 C.F.R.

² 5 U.S.C. § 8128(a); *see also* *F.R.*, 61 ECAB __ (Docket No. 09-575, issued January 4, 2010); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.605; *see also* *R.B.*, 61 ECAB __ (Docket No. 09-1241, issued January 4, 2010); *A.L.*, 60 ECAB __ (Docket No. 08-1730, issued March 16, 2009).

⁴ *Id.* at § 10.606(b); *see also* *L.G.*, 61 ECAB __ (Docket No. 09-1517, issued March 3, 2010); *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, 61 ECAB __ (Docket No. 09-1655, issued March 18, 2010); *Y.S.*, 60 ECAB __ (Docket No. 08-440, issued March 16, 2009).

§ 10.606(b). Appellant did not allege that the Office erroneously applied or interpreted a specific point of law. She also failed to advance a relevant legal argument or to submit relevant and pertinent evidence not previously considered by the Office.

On reconsideration, appellant contended that her doctor's office had failed to submit her medical records to the Office in time for the September 8, 2009 decision, but had since sent such records. The Office had denied her recurrence of disability claim because Dr. Baxt did not provide a report which substantiated a firm diagnosis of her condition. Appellant failed to submit any new or relevant medical evidence pertaining to her claim; rather, she merely noted that her physician's office had sent such records. She failed to provide new relevant evidence or advance a new legal argument as required under 20 C.F.R. § 10.606(b). As appellant's request for reconsideration did not meet any of the requirements warranting reconsideration, the Office's decision to deny reconsideration was proper.⁸

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).⁹

⁸ *S.J.*, 60 ECAB __ (Docket No. 08-2048, issued July 9, 2009); *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008).

⁹ The Board notes that appellant submitted additional evidence following the October 28, 2009 nonmerit decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the nonmerit decision of the Office of Workers' Compensation Programs dated October 28, 2009 is affirmed.

Issued: February 4, 2011
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