

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

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**DORIS ROGERS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Little Rock, AK, Employer**

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**Docket No. 05-172  
Issued: April 11, 2005**

*Appearances:*  
*Doris Rogers, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On October 21, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated August 18, 2004, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the August 18, 2004 nonmerit decision. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> Therefore, the Board has no jurisdiction to consider the Office's January 22 or June 21, 2002 merit decisions that denied appellant's emotional condition claim.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>2</sup> See *Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

## **FACTUAL HISTORY**

This case was previously before the Board.<sup>3</sup> By decision dated December 17, 2003, the Board affirmed a June 21, 2002 decision denying appellant's emotional condition claim<sup>4</sup> and a December 18, 2002 decision denying her request for reconsideration.<sup>5</sup>

On July 15, 2004 appellant requested reconsideration. She provided an undated written statement and a May 24, 1996 letter describing her emotional condition and factors of employment.

Appellant submitted an undated memorandum from an attorney addressing a class action suit against the employing establishment, copies of employing establishment disciplinary procedures and a copy of a job description.

Appellant submitted a letter from a customer complimenting her service, an undated letter from an employing establishment workplace improvement analyst who explained appellant's options regarding problems with her supervisor and an emotional condition claim form she filed on May 8, 1990.

Appellant also submitted evidence previously of record.

Appellant submitted copies of medical reports.

By decision dated August 18, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review.<sup>6</sup>

## **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts on review, may end, decrease, or increase the compensation previously awarded; or award compensation previously refused or discontinued.<sup>7</sup>

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific

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<sup>3</sup> Docket No. 03-1574 (issued June 18, 2004).

<sup>4</sup> The Office found that appellant failed to establish any compensable factor of employment.

<sup>5</sup> On July 6, 2001 appellant filed an occupational disease claim alleging that she suffered from depression due to factors of her federal employment.

<sup>6</sup> The record contains evidence submitted subsequent to the Office decision of August 18, 2004. The jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). Therefore, the Board has no jurisdiction to review this evidence for the first time on appeal.

<sup>7</sup> 5 U.S.C. § 8128(a).

point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>8</sup> 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.<sup>9</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.<sup>10</sup>

### **ANALYSIS**

In support of her request for reconsideration, appellant submitted an undated memorandum from an attorney addressing a class action suit against the employing establishment, copies of employing establishment disciplinary procedures, a copy of a job description, a letter from a customer complimenting her service, an undated letter from an employing establishment workplace improvement analyst who explained appellant's options regarding problems with her supervisor and a May 8, 1990 emotional condition claim form. This evidence does not address the factors of employment at issue in this claim. Therefore, it does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted evidence previously of record. As this evidence was previously considered by the Office, it does not constitute new relevant and pertinent evidence.

Appellant submitted copies of medical reports. However, unless a claimant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.<sup>11</sup> Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

As 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 submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>8</sup> 20 C.F.R. § 10.606(b)(2).

<sup>9</sup> 20 C.F.R. § 10.607(a).

<sup>10</sup> 20 C.F.R. § 10.608(b).

<sup>11</sup> See *Garry M. Carlo*, 47 ECAB 299 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 18, 2004 is affirmed.

Issued: April 11, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member