

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

BRIAN E. WILSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Marietta, GA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1894
Issued: December 20, 2005**

Appearances:
Brian E. Wilson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 13, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 16, 2005 nonmerit decision denying his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated March 15, 2004 and the filing of this appeal on September 13, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further merit review of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 39-year-old automotive technician, filed a traumatic injury claim on April 9, 2003, alleging that he sustained an injury to his chest on August 4, 2001 while sliding a car battery across a parts counter. Appellant submitted treatment notes dated August 1 and 4, 2003 from

Dr. Steven A. Goldfarb, a Board-certified orthopedic surgeon, who indicated that appellant sustained a fractured great left toe on August 1, 2003.¹ In the treatment note of August 1, 2003, Dr. Goldfarb checked a box indicating that the diagnosed condition, fractured great left toe, was causally related to the alleged employment injury.

On May 2, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to provide a history of the injury and to submit a firm diagnosis of any condition resulting from the injury. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms, the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated June 5, 2003, the Office denied appellant's claim, finding that he failed to establish the August 4, 2001 incident occurred at the time, place and in the manner alleged.

By letter dated June 19, 2003, appellant's attorney requested an oral hearing, which was held on November 14, 2003. By decision dated March 15, 2004, an Office hearing representative affirmed the June 5, 2003 decision.

By letter dated February 24, 2005, appellant requested reconsideration.² Appellant submitted a February 8, 2005 report from Dr. Julio Schwartzman, Board-certified in internal medicine. He stated:

“[Appellant] comes for medical reasons. He was a mechanic and he was using a hammer and he heard a pop in the right shoulder area and later on during the day he recurred with the pop and pain . . . the next day [it] happened again with some movement of the shoulder[.] [T]wo days later he was pushing on object over the counter and he had [a] pop in the anterior chest wall and was seen by [a physician].”

Dr. Schwartzman stated that the injury occurred on July 1, since which time appellant had experienced chest pain which was present when he was under stress.³ He diagnosed right shoulder pain, chronic; depression; left elbow pain; and worsening back pain. Dr. Schwartzman advised that appellant needed to be examined by an orthopedic surgeon in order to ascertain his conditions, as he had multiple complaints regarding several joints, and he was not sure of the significance of these complaints. He also stated that appellant was experiencing depression which exacerbated his conditions.

¹ One of the treatment notes appellant submitted is not legible.

² Appellant noted he was seeking reconsideration “for all five of my cases.”

³ Dr. Schwartzman did not list the year of the injury.

By decision dated June 16, 2005, the Office denied appellant's application for review on the ground that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

ANALYSIS

Appellant requested reconsideration of the June 16, 2005 decision by the Office hearing representative, which affirmed the June 5, 2003 Office decision denying his claim on the grounds that he had not established that the injury occurred at the time, place and in the manner alleged. In this case, appellant alleged that the injury occurred when he slid a battery across a parts counter on August 4, 2001 causing a chest injury. The Office found that the incident did not occur as alleged. In support of his request, appellant submitted Dr. Schwartzman's February 18, 2005 report, which indicated he had injured his right shoulder while working for the employing establishment and provided several diagnoses of the alleged work-related conditions. The Board finds that Dr. Schwartzman's February 18, 2005 report does not constitute evidence relevant to the issue of whether appellant sustained an injury on August 4, 2004 at the time, place and manner alleged. Dr. Schwartzman attributed appellant's injury initially to appellant's use of a hammer with additional symptoms while pushing an object across a counter several days later. The history described by Dr. Schwartzman does not assist in establishing that appellant sustained a chest injury on August 4, 2001. Dr. Schwartzman is unable to identify the time, date and place of injury. He also does not identify the exact mechanism of injury alleged by appellant, pushing a battery across a counter. Dr. Schwartzman's February 18, 2005 report therefore is not relevant new evidence that appellant sustained an injury on August 4, 2001 at the time, place and in the manner alleged.

The refusal of the Office to reopen appellant's case for further consideration of the merits of his claim therefore did not constitute an abuse of discretion.⁶

Accordingly, the June 16, 2005 Office decision is affirmed.

⁴ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

⁶ *Carol Cherry (Donald Cherry)*, 47 ECAB 658 (1996).

CONCLUSION

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim did not constitute an abuse of discretion.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 20, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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