

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

ANTHONY L. MELCHIONNA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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**Docket No. 05-1393
Issued: November 9, 2005**

Appearances:
Ron Watson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 21, 2005 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated March 21, 2005 denying his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated December 17, 2003 and the filing of this appeal on June 21, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

This case is before the Board for the third time. Appellant sustained a work-related injury on May 18, 1980 which the Office accepted for a lumbosacral strain. He returned to work in a light-duty position on September 6, 1980. On June 7, 1983 appellant filed a claim alleging

that he injured his back in the performance of light-duty work. He stopped work on that date and did not return. The Office accepted a low back strain. The record reflects that appellant has preexisting degenerative disc disease and degenerative lumbar spondylosis which are nonaccepted conditions. The Office terminated appellant's compensation benefits in an August 23, 1994 decision. In a December 14, 1999 decision, the Board affirmed a December 17, 1998 decision of the Office which denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.¹

Following the Board's December 14, 1999 decision, appellant requested reconsideration. By decision dated February 12, 2001, the Office denied modification of its August 23, 1994 termination decision. In a decision dated November 1, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review. In a December 17, 2003 decision, the Board affirmed the Office's November 1 and February 12, 2001 decisions.² The probative value of appellant's physician's opinions that he continued to be totally disabled as a result of the June 7, 1983 injury was found diminished as their opinions were based on an inaccurate factual history which differed significantly from what appellant reported on his traumatic injury (CA-1) claim form. The law and facts of the case, as set forth in the Board's prior decisions, are incorporated herein by reference.

Following the Board's December 17, 2003 decision, appellant's representative, requested reconsideration, in a letter dated December 1, 2004. He stated that, although the medical record reflected different versions of how appellant's injury occurred on June 7, 1983, he argued that this was because appellant was not in possession of his glasses and he could not see or write. He contended that the proper history of the injury was that appellant was in a chair moving and twisting and, in support of his contention, resubmitted June 7, 1983 reports from Dr. Jane E. Moseby, which were previously of record. Also submitted was the first page of appellant's June 7, 1983 CA-1 form in which he wrote "I was told to put down what I was doing and I could not see without my glasses."

By decision dated March 21, 2005, the Office denied reconsideration, without a merit review, finding that appellant failed to submit any new and relevant evidence or a legal argument.

On appeal, appellant asserts that he provided a proper history of the injury and he should not be denied compensation because the medical record reflected different versions of how his injury occurred. He further stated that he needed help filling out the CA-1 form as he lost his glasses and could not read without them and had answered the question of what he was doing at the time of the accident exactly as it was put to him.

¹ Docket No. 99-976 (issued December 14, 1999).

² Docket No. 02-564 (issued December 17, 2003).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Act,³ 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵ 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 of the merits.

ANALYSIS

The relevant issue in this case is a medical one, whether appellant had any continuing disability or residuals after September 18, 1994. Appellant did not contend that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office with respect to the issue at hand. Instead, appellant argued that he was not in possession of his glasses when he was injured and that he was unable to see or write and was, therefore, directed to give an inaccurate history of injury. In this case, appellant attributed his injury on his CA-1 form to "putting postage due envelopes in box on floor." Appellant, however, submitted no evidence which demonstrated that he was directed to write an inaccurate history of injury on his CA-1 traumatic claim form. Absent such evidence, such as witness statements, the Office accurately relied on the cause of the injury as appellant stated on his CA-1 form. Whether or not appellant was in possession of his glasses at the time he completed the CA-1 form is irrelevant and does not explain why he would write that his injury occurred in a different manner. Thus, appellant has not advanced a relevant argument. Furthermore, the June 7, 1983 reports from Dr. Jane E. Moseby, which appellant asserts supports the real history of injury, were previously of record and previously reviewed. The Board has held that 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.⁶

For the foregoing reason, 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 any relevant and pertinent new evidence not previously considered by the Office. Accordingly, the Office properly denied his request for reconsideration.

³ 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).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2005 is affirmed.

Issued: November 9, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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