

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

L.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Metro, GA, Employer**

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**Docket No. 06-779
Issued: August 29, 2006**

Appearances:
Lorenzo Cobb, Esq., 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 February 14, 2006 appellant timely appealed a nonmerit decision of the Office of Workers' Compensation Programs dated November 8, 2005 denying her request for reconsideration. Because more than one year has passed between the Office's last merit decision of September 16, 2003 and the filing of this appeal, the Board does not have 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 claim for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case was previously on appeal before the Board. In a February 8, 2002 decision, the Board affirmed a March 23, 2001 Office decision denying appellant's request for

reconsideration.¹ The facts of the case, as set forth in the prior decision, are incorporated by reference. The relevant facts are set forth.

The record reflects that, on April 21, 1990, appellant, then a 47-year-old letter carrier, injured her back and legs when she was wedged between two 80-pound tubs. The Office accepted appellant's claim for lumbar sprain, neck sprain and displacement of lumbar intervertebral disc. Appellant was paid appropriate medical and wage-loss benefits. On April 4, 1988 appellant returned to a modified part-time flexible clerk position working eight hours a day. By decision dated July 20, 1998, the Office found that appellant's modified part-time flexible clerk position represented her wage-earning capacity, which was equal to or greater than the wages being paid for the position she held when injured. Appellant stopped work on April 2, 1999 and claimed continuing total disability compensation commencing April 2, 1999. The Office denied this claim on August 6, 1999 and March 3, 2000. After a reconsideration request, the Office's March 23, 2001 decision followed.

On March 17, 2003 following the Board's decision, appellant filed a claim for compensation for the period October 24, 2000 to March 20, 2003. In a May 6, 2003 letter, the Office informed appellant that medical evidence establishing disability for work during the entire claimed period was needed.

By decision dated September 16, 2003, the Office denied appellant's claim on the grounds that it was not established that the claimed medical condition was related to the established work-related events.

On September 15, 2004 appellant requested reconsideration and submitted an August 19, 2003 Form OWCP-5c work capacity evaluation from Dr. Steven P. Disch, a Board-certified neurological surgeon, which was previously of record. In a September 15, 2004 letter, her attorney of record, requested a 45-day extension to submit additional medical evidence. A September 20, 2005 Form OWCP-5c work capacity evaluation from Dr. Disch was subsequently submitted. Both reports from Dr. Disch addressed appellant's work restrictions.

By decision dated November 8, 2005, the Office denied reconsideration finding that the evidence submitted was cumulative in nature and insufficient to warrant further merit review.

LEGAL PRECEDENT

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).² The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously

¹ Docket No. 01-1546 (issued February 8, 2002).

² 20 C.F.R. § 10.608(a) (1999).

considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁴

ANALYSIS

In her September 15, 2004 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. She provided two work capacity evaluation form reports from Dr. Disch dated August 19, 2003 and September 20, 2005 which set forth appellant's work restrictions. The Office denied appellant's claim because of insufficient rationalized medical evidence to establish a causal relationship between her claimed period of disability for the period October 24, 2000 to March 20, 2003. Dr. Disch's August 19, 2003 report was previously of record. The Board has held that the submission of evidence which is duplicative does not constitute a basis for reopening a case.⁵ Dr. Disch's September 20, 2005 report fails to provide any discussion on the causal relationship of appellant's condition or relate such condition to the claimed period of disability. Although the September 20, 2005 report is new, it is not relevant to the issue at hand. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. Thus, such evidence is not sufficient to warrant further merit review.

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 constitute 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 refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ *Freddie Mosley*, 54 ECAB 255 (2002).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 8, 2005 is affirmed.

Issued: August 29, 2006
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