United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 06-1058**
	)	**Issued: August 17, 2006**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Philadelphia, PA, Employer	)	

Appearances:
R.B., pro se
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 April 13, 2006 appellant filed a timely appeal of a January 4, 2006 decision of the Office of Workers' Compensation Programs, denying merit review of the claim. The Board's jurisdiction is limited to decisions issued within one year of the filing of the appeal pursuant to 20 C.F.R. § 501.3(d)(2). Since the last decision on the merits of the claim is dated December 10, 2004, the Board does not have jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that appellant sustained a lumbar strain on April 8, 2002 when she lifted a sack of mail. The record also indicates that appellant had a prior claim for a back injury in June 2000, and she had returned to a light-duty position on March 18, 2002.

The Office terminated compensation for medical benefits and wage loss by decision dated December 10, 2004. The Office found that the weight of the evidence was represented by Dr. John Williams, a physician selected as a referee examiner, to resolve a conflict in the medical evidence. In a June 1, 2004 report, Dr. Williams opined that appellant had fully recovered from the April 8, 2002 injury.

On May 6, 2005 the Office received documents regarding transfer of health benefits coverage under the Federal Employee Health Benefits (FEHB) plans since 1999. In a letter dated November 4, 2005, appellant requested reconsideration of her claim. She noted that she had been injured in June 2000 and that she had been without medical insurance for intermittent periods due to administrative problems between the Office and the employing establishment. Appellant argued that she was not able to receive the medical treatments necessary to recover from the injuries.

By decision dated January 4, 2006, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim. The Office found that the evidence submitted was not relevant to the issue presented.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."[2] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[3]

ANALYSIS

Appellant submitted an application for reconsideration dated November 4, 2005. In order to require the Office to reopen her claim for a review on the merits, she must meet one of the requirements of section 10.606(b)(2). The underlying merit issue in the case is a medical issue of whether appellant continued to have an employment-related condition or disability after

[1] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[2] 20 C.F.R. § 10.606(b)(2).

[3] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

December 10, 2004. She did not submit any new and relevant evidence on this issue. The health benefit forms do not constitute probative medical evidence on the issue presented.[4]

The November 4, 2005 letter does not show that the Office erroneously applied or interpreted a point of law, or advance a new and relevant legal argument. The allegations regarding administrative problems with health benefits are not relevant to the specific compensation issue with respect to appellant's claim. Since appellant did not meet any of the requirements of section 10.606(b)(2), the Office properly declined to reopen the claim for merit review in this case.

CONCLUSION

The Office properly refused to reopen the claim for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 4, 2006 is affirmed.

Issued: August 17, 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

[4] On appeal, appellant submitted medical evidence which appeared to be evidence previously of record. Even if new medical evidence were submitted, the Board may review only evidence that was before the Office at the time of the final decision. 20 C.F.R. § 501.2(c).