United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 06-1128**
	)	**Issued: August 10, 2006**
DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL & PREVENTION, Atlanta, GA, Employer	)	

Appearances:
S.H., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 21, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated August 18 and 31, 2005, denying her requests for reconsideration of a March 8, 2005 decision which denied her claim for an ankle injury. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those decisions issued within one year prior to the filing of the appeal.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of the claim.[2]

ISSUE

The issue is whether the Office properly denied appellant's requests for reconsideration under 5 U.S.C. § 8128.

[1] 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

[2] *See Algimantas Bumelis*, 48 ECAB 679 1997); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

FACTUAL HISTORY

On May 14, 2003 appellant, then a 38-year-old medical support assistant, filed a traumatic injury claim alleging that she sprained her right ankle on May 9, 2003 as she exited her vehicle in the employing establishment parking lot.

In clinical notes dated May 9, 2003, Dr. Lewis C. Chosewood, a Board-certified family practitioner and an employing establishment physician, referred appellant to a hospital emergency room for diagnosis and treatment of her right ankle. On May 16, 2003 he indicated that appellant was totally disabled pending further evaluation of her right ankle condition. Appellant also submitted notes from physical therapists dated June 10 to July 8, 2003.[3]

On February 2, 2005 the Office asked appellant to submit additional information, including a detailed medical report containing a diagnosis and an explanation as to how her right ankle condition was causally related to the incident on May 9, 2003. There was no response.

By decision dated March 8, 2005, the Office denied appellant's claim, finding that the medical evidence did not establish that her right ankle injury was causally related to factors of her employment.

On June 7, 2005 appellant filed a request for reconsideration. She requested a copy of her complete case record which the Office mailed to her on July 15, 2005.

By decision dated August 18, 2005, the Office denied appellant's request for reconsideration.

In an August 29, 2005 telephone memorandum, a claims examiner indicated that she informed appellant that a decision on her request for reconsideration was issued on August 18, 2005. Appellant was advised that she had one year in which to file another request for reconsideration with additional evidence. She indicated that she planned to submit additional medical evidence in the form of a narrative report from her physician and emergency room notes.

By decision dated August 31, 2005, the Office denied further merit review of appellant's claim.[4]

[3] As a physical therapist is not a physician under the Federal Employees' Compensation Act, these reports do not constitute probative medical evidence. *See Jennifer L. Sharp*, 48 ECAB 209 (1996).

[4] Appellant submitted additional evidence subsequent to the Office decision of August 31, 2005. The Board's jurisdiction 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). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

Section 8128(a) of the Act[5] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

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 point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[6] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[7]

ANALYSIS

Appellant did not submit any relevant and pertinent evidence or relevant legal argument prior to the August 18 and 31, 2005 decisions,[8] nor did she allege that the Office erroneously applied or interpreted a specific point of law. Therefore, the Office properly denied her requests for reconsideration.

On appeal, appellant indicates that she never received copies of the August 18 and 31, 2005 decisions. However, the record reflects that copies of those decisions were mailed to the correct address of record for appellant. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.[9] Therefore, appellant's contention that she never received copies of the August 18 and 31, 2005 decisions lacks merit.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b)(2).

[7] 20 C.F.R. § 10.608(b).

[8] Appellant submitted no additional documentation, only a request for reconsideration.

[9] *James A. Gray*, 54 ECAB 277 (2002); *George F. Gidicsin*, 36 ECAB 175 (1984).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 31 and 18, 2005 are affirmed.

Issued: August 10, 2006
Washington, DC

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

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