

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

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**T.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brick, NJ, Employer**

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**Docket No. 06-1510  
Issued: December 29, 2006**

*Appearances:*  
*Appellant, 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 June 12, 2006 appellant filed a timely appeal of the February 15, 2006 nonmerit decision of the Office of Workers' Compensation Programs. The latest merit decision in the case is dated December 10, 2004. Because appellant filed his appeal more than a year after the last merit decision, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board does not have jurisdiction over the merits of the claim. Therefore, the only decision properly before the Board is the Office's February 15, 2006 decision denying reconsideration.

**ISSUE**

The issue is whether the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

This case has previously been before the Board. Appellant sustained a subluxation of the cervical spine as a result of a December 23, 1988 employment-related motor vehicle accident. He was 44 years old at the time of his injury and had been working as a letter carrier. For a

period of time following his 1988 injury, appellant was able to continue to perform his regular duties. He subsequently ceased working due to alleged recurrences of disability on May 5 and September 21, 1989. The Office ultimately denied appellant's recurrence claim in a merit decision dated January 4, 1994. For approximately six and a half years after the 1994 denial, appellant or his representative continued to write the Office regarding his previously denied claim. He also filed several additional claims for wage-loss compensation. The Office denied reconsideration of the recurrence claim in decisions dated October 3, 2000 and January 16, 2001. When the case was last on appeal, the Board set aside the Office's January 16, 2001 decision denying reconsideration. The Office found that appellant's request for reconsideration was untimely and failed to present clear evidence of error. However, the Board found that because of undue delay in responding to appellant's prior correspondence, the Office had effectively denied him the opportunity to obtain merit review. Accordingly, the Board remanded the case to the Office for issuance of a *de novo* decision. The facts of the case as set forth in the Board's May 12, 2004 decision are incorporated herein by reference.<sup>1</sup>

On remand, the Office referred appellant for an impartial medical evaluation by Dr. Ian Blair Fries, a Board-certified orthopedic surgeon. He examined appellant on September 14, 2004. In a September 24, 2004 report, Dr. Fries found that appellant had "no objective findings or residuals clearly from his December 23, 1988 accident" and he could immediately return to work full time with certain restrictions.<sup>2</sup> However, because of limited available information Dr. Fries was unable to determine if appellant's May 5 and September 21, 1989 work stoppages were related to the December 23, 1988 employment injury.

The Office reviewed the claim on the merits. In a decision dated December 10, 2004, it denied modification, finding that appellant failed to establish a causal nexus between his accepted employment injury and his claimed recurrences of disability on May 5 and September 21, 1989.

On November 17, 2005 appellant requested reconsideration.<sup>3</sup> By decision dated February 15, 2006, the Office denied appellant's request for reconsideration.

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<sup>1</sup> *Thomas J. Guinane*, Docket No. 02-813 (issued May 12, 2004). Appellant also requested reconsideration before the Board, which the Board denied by order dated August 31, 2004.

<sup>2</sup> Appellant was involved in another motor vehicle accident (MVA) on January 30, 1998 and he underwent a three-level spinal fusion on July 13, 1998. Dr. Fries surmised that appellant's current cervical findings, including mildly restricted neck motion, were likely related to his 1998 MVA and surgery.

<sup>3</sup> The Office considered appellant's November 17, 2005 request for assistance from his congressional representative as a request for reconsideration of the December 10, 2004 decision. The congressional request reads as follows: "Would you request that O.W.C.P. reconsider their denial of and reinstate my claim as suggested by the Compensation Appeals Board. Once they do this, I would hope you could convince them to allow this case to go to a hearing where an impartial (sic) judge could decide this case fairly -- something O.W.C.P. has shown a reluctance to do for over seventeen years."

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.<sup>4</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain 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 new evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### **ANALYSIS**

Appellant's November 17, 2005 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second requirements under section 10.606(b)(2).<sup>7</sup> Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any relevant and pertinent new evidence with his November 17, 2005 request for reconsideration. The Office correctly noted there was "no evidence ... submitted with the request for reconsideration." As there was no relevant and pertinent new evidence for the Office to consider, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>8</sup> Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the November 17, 2005 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for a review of the merits of his claim.

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>6</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii) (1999).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2)(iii) (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 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