

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

D.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ventura, CA, Employer**

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**Docket No. 06-1834
Issued: December 8, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2006 appellant filed a timely appeal from the May 4, 2006 nonmerit decision by the Office of Workers' Compensation Programs which denied appellant's request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated March 7, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 14, 1999 appellant, then a 45-year-old lobby director/telephone operator, filed an occupational disease claim alleging that she sustained a pinched nerve in her left and right elbow as a result of holding the telephone during conversations as part of her federal

employment. The Office accepted appellant's claim for bilateral epicondylitis and nerve excision of the left elbow.

By letter dated August 21, 2002, the Office informed appellant that the position of lobby director/telephone operator offered by the employing establishment was suitable work within her capabilities. The Office noted that this position was within the work restrictions set by appellant's physician. Appellant accepted this offer and returned to work on November 4, 2002. However, appellant only worked for one week and left after alleging that the position aggravated her injury. By letter dated January 23, 2003, the Office informed appellant that it had determined that she abandoned her suitable work and provided 15 days for her to return to work with no penalty. By decision dated February 21, 2003, the Office terminated appellant's compensation effective November 4, 2002 as it found that she had refused or neglected suitable work. By letter dated July 30, 2003, appellant requested reconsideration. In a decision dated October 30, 2003, the Office reviewed appellant's case on the merits and discussed the new medical evidence of record, specifically reports by appellant's new treating physician, Dr. Lorenzo, G. Walker, a Board-certified orthopedic surgeon specializing in surgery of the hand. The Office denied modification of the February 21, 2003 decision.

On December 1, 2003 Dr. Walker performed a right cubital tunnel release, right medial epicondylectomy and right neurolysis on appellant.

On November 1, 2004 appellant requested reconsideration and submitted further medical evidence. By decision dated March 7, 2005, the Office reviewed appellant's case on the merits and denied reconsideration.

On March 1, 2006 appellant requested reconsideration. She resubmitted reports by Dr. Walker. By decision dated May 4, 2006, the Office denied reconsideration without reviewing the merits of the case as it found that the evidence submitted failed to warrant merit review.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides that the Office may review an award for or against compensation upon application by an employee who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.²

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's regulations provide that the application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a

¹ 5 U.S.C. § 8101 *et seq.*

² 20 C.F.R. § 10.605.

specific point of law; (2) advances a legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.

ANALYSIS

Appellant did not submit any new relevant legal argument, nor did she allege that the Office erroneously applied or interpreted a specific point of law. Consequently, she is not entitled to a review of the merits of her claim based on the first and second requirements of section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board finds that this evidence is duplicative of statements previously considered. Material which is cumulative or duplicative of that already in the record had no evidentiary value in establishing a claim and does not constitute a basis for reopening a case for further merit review.⁴ The reports submitted by appellant on reconsideration are duplicative of reports already in evidence previously submitted and considered by the Office. Therefore, appellant has failed to submit evidence sufficient to warrant a merit review of the claim.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Daniel M. Dupor*, 51 ECAB 482 (2000).

ORDER

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

Issued: December 8, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board