

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

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<b>VALERIE F. DOWNEY, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 06-571</b>
	)	<b>Issued: June 1, 2006</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Long Beach, CA, Employer</b>	)	

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*Appearances:*  
*Valerie F. Downey, 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 January 12, 2006 appellant filed a timely appeal of the January 20, August 1 and October 17, 2005 decisions of the Office of Workers' Compensation Programs, which denied her requests for reconsideration. Because more than one year has elapsed between the last merit decision dated August 6, 2004 to 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.

**FACTUAL HISTORY**

On December 12, 2002 appellant filed an occupational disease claim alleging job-related stress caused by multiple medical conditions aggravated by her employment. By letter dated January 15, 2003, the employing establishment controverted appellant's claim noting that there was an absence of medical evidence and that she had not worked since December 3, 2000.

By decision dated December 11, 2003, the Office initially denied appellant's claim because it was not filed in a timely manner as it was filed over three years after appellant had been last exposed to the implicated employment factors. Appellant filed numerous requests for reconsideration. The Office reviewed these requests but denied modification by decisions dated February 2, March 2 and May 10, 2004.

In a decision dated August 6, 2004, the Office found that appellant's claim was timely filed. The Office noted that many of her allegations with regard to employment factors causing her emotional condition were previously addressed and rejected in a prior claim, which was affirmed by the Board.<sup>1</sup> The Office noted the new factors identified by appellant included the behavior of others at a mandatory settlement conference on January 23, 2003 and activities surrounding letters she received informing her that her bid position had been abolished. However, the Office found that, although these incidents occurred, they were not related to her regular or specially assigned duties and accordingly were not compensable. The Office denied appellant's claim.

The Office denied appellant's subsequent requests for reconsideration without merit review on November 5, 2004 and January 5, 2005.

On January 10, 2005 appellant again requested reconsideration. She submitted a March 31, 1999 medical report from Dr. Eric D. Feldman, a Board-certified physiatrist, addressing pain in her right elbow. In a June 30, 1999 report, he indicated that appellant related that she was experiencing significant stress from ongoing problems related to work situations. In an August 14, 1999 report, Dr. Feldman noted that appellant was feeling better with regard to her back pain. He noted that, despite continuing musculoskeletal complaints, appellant continued to work. Appellant also submitted a copy of a March 10, 2000 decision by the California Unemployment Insurance Appeals Board previously of record. The decision found that as appellant was discharged from her employment for reasons other than misconduct she was not disqualified for benefits.

By decision dated January 20, 2005, the Office denied further merit review, finding that the evidence submitted was factually repetitive, immaterial and irrelevant.

On May 3, 2005 appellant filed another request for reconsideration. In support thereof, she submitted a February 23, 2003 report by Dr. Carl S. Wells, a clinical psychologist. He indicated that he saw appellant from November 1999 to 2000 and that at the time appellant was suffering from a major depressive disorder, had very low self-esteem, felt hopeless, fatigued and had impaired sleep. He noted that her condition after the sessions was unchanged. By decision dated August 1, 2005, the Office denied reconsideration.

On August 4, 2005 appellant again requested reconsideration. She submitted an article from the *American Postal Worker*, a request for leave under the Family and Medical Leave Act for "unlawful acts by employer" and notes from her psychologist from June 19, 1999. By decision dated October 17, 2005, the Office denied appellant's request for reconsideration without reviewing the case on the merits.

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<sup>1</sup> Valerie Downey, Docket No. 01-902 (issued November 15, 2001).

## LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup>

## ANALYSIS

The Board finds that the Office properly denied appellant's requests for reconsideration without further review of the merits of the case. Appellant submitted no relevant and pertinent new evidence. Appellant's claim was denied because she had not established compensable factors of employment. Accordingly, the medical evidence submitted by Drs. Feldman and Wells is not relevant to the underlying issue.<sup>3</sup> The opinion of the California Appeals Board was similarly irrelevant. In determining whether an employee is disabled under the Federal Employees' Compensation Act, the findings of another agency are not determinative.<sup>4</sup> The Federal Employees' Compensation Act and statutes of other agencies have different standards of proof on the question of disability and accordingly these decisions have no evidentiary value.<sup>5</sup> With the submission of this document, appellant did not specifically allege any compensable employment factors. Moreover, the document was cumulative in that appellant had quoted from it in support of a prior request for reconsideration. As such, it did not warrant further merit review.<sup>6</sup> Furthermore, magazine articles are not relevant because such materials are of general application and are not determinative of any issue with regard to this specific case.<sup>7</sup> Appellant also did not advance any new legal arguments or any new allegations that the Office improperly applied a particular point of law. All of appellant's arguments have been addressed in previous decisions.<sup>8</sup>

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

<sup>3</sup> As appellant has not established compensable factors of employment, the medical evidence need not be considered. *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> 5 U.S.C. § 8128(b).

<sup>5</sup> See *Daniel Deparini*, 44 ECAB 657 (1991); *Hazelee K. Anderson*, 37 ECAB 277 (1986).

<sup>6</sup> See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>7</sup> See *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>8</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; 20 C.F.R. § 501.2(c).

**CONCLUSION**

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 October 17, August 1 and January 20, 2005 are affirmed.

Issued: June 1, 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