

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

VALREE D. PERRY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

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**Docket No. 06-238
Issued: March 6, 2006**

Appearances:
Valree D. Perry, 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 November 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 20, 2005 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's September 14, 2004 decision denying her request for recurrence of total disability. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

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

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On September 19, 2001 appellant, then a 40-year-old mail processor, filed an occupational disease claim alleging that she sustained neck and shoulder injuries due to performing her work duties, including lifting heavy mail trays and sweeping and loading mail. Appellant did not stop working for the employing establishment, but he began working in a limited-duty position for the employing establishment.

Appellant received treatment from Dr. Kenneth J. Buley, a physician Board-certified in physical medicine and rehabilitation. Based on the reports of Dr. Buley, the Office accepted that appellant sustained an employment-related cervical strain and right shoulder strain.²

Appellant submitted a November 19, 2001 report in which Dr. Buley reported the findings of diagnostic testing and indicated that there was evidence of a median mononeuropathy at the right wrist, as in a moderately severe right carpal tunnel syndrome, but no evidence of any form of cervical neuropathy. In a report dated December 17, 2001, he diagnosed myofascial pain syndrome of the right trapezius and levator scapulae and moderately severe right carpal tunnel syndrome. Dr. Buley submitted reports which contained similar diagnoses, including a report dated January 28, 2002. In reports dated August 6 and December 6, 2002, Dr. Buley noted that appellant reported increased pain symptoms in his right shoulder and diagnosed right rotator cuff tendinitis with impingement syndrome.

Appellant stopped work on June 25, 2004 and filed a claim alleging that she sustained a recurrence of total disability on that date due to her accepted employment injuries, a cervical strain and right shoulder strain. She submitted reports of Dr. Buley and other attending physicians which were dated from early 2004 onwards.

By decision September 14, 2004, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after June 25, 2004 due to her accepted employment injuries.

On December 8, 2004 appellant requested reconsideration of the Office's September 14, 2004 decision. In support of her request, she submitted copies of the November 19 and December 17, 2001, January 28, August 6 and December 6, 2002 reports of Dr. Buley.

By decision dated July 20, 2005, the Office denied appellant's request for merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that the evidence or

² Dr. Buley diagnosed cervical pain with a possible right C5 radiculopathy and possible myofascial pain syndrome in the upper right trapezius and levator scapulae.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The Office accepted that appellant sustained an employment-related cervical strain and right shoulder strain. She stopped work on June 25, 2004 and filed a claim alleging that she sustained a recurrence of total disability on that date due to her accepted employment injuries.

In connection with her December 8, 2004 request for reconsideration of the Office's September 14, 2004 denial of her claim, appellant resubmitted copies of the November 19 and December 17, 2001, January 28, August 6 and December 6, 2002 reports of Dr. Buley, an attending physician Board-certified in physical medicine and rehabilitation. However, the submission of these reports does not require reopening appellant's case for merit review as the reports had been previously submitted and considered by the Office in its denial of her recurrence of total disability claim. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁷

Appellant has not established that the Office improperly denied her request for further review of the merits of its September 14, 2004 decision under section 8128(a) of the Act, because the evidence she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 20, 2005 decision is affirmed.

Issued: March 6, 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