

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

_____)	
I.P., Appellant)	
)	
and)	Docket No. 06-1143
)	Issued: September 1, 2006
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Cleveland, OH, Employer)	
_____)	

Appearances:
Rotishia C. Smith, for the appellant
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 April 25, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' nonmerit decision dated January 9, 2006, denying her request for reconsideration of her emotional condition claim. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to final 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 abused its discretion in denying appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

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

FACTUAL HISTORY

On April 13, 2004 appellant, then a 35-year-old part-time flexible automation clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to factors of her federal employment.

By decision dated December 22, 2004, the Office denied appellant's emotional condition claim.

On December 18, 2005 appellant requested reconsideration. In support of her request, she submitted evidence previously of record, a May 3, 2004 memorandum from a union steward and a July 27, 2004 letter from an Interagency Mediation Group mediator.

By decision dated January 19, 2006, the Office denied appellant's reconsideration request.³

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ 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.⁵ 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.⁶

³ Appellant submitted additional evidence subsequent to the Office decision of January 19, 2006. 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.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

ANALYSIS

The merits of the Office's denial of appellant's emotional condition claim are not within the jurisdiction of the Board on this appeal. Therefore, the only issue is whether the evidence submitted by appellant with her request for reconsideration was sufficient to warrant further merit review.

In support of her December 18, 2005 reconsideration request, appellant submitted evidence which was previously of record. Evidence previously of record does not constitute relevant and pertinent evidence not previously considered by the Office.⁷

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied her claim.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2006 is affirmed.

Issued: September 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

⁷ See *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that duplicates that already of record does not constitute a basis for reopening a claim for further merit review).