United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
	)	**Docket No. 06-1323**
and	)	**Issued: September 15, 2006**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Monticello, MN, Employer	)	

Appearances:
J.O., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 16, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated May 2, 2006 denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision. Because the Office has not issued a decision on the merits of the claim within the year prior to the May 16, 2006 filing of the appeal, the Board has no jurisdiction to review the merits of this case.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her present appeal with the Board on May 16, 2006, the only decision properly before the Board is the Office's May 2, 2006 nonmerit decision denying appellant's request for reconsideration. *See Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

On March 6, 2004 appellant, a 60-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1). She alleged that on February 18, 2004 she injured her back while loading her car in the parking lot, when she was hit by a runaway cart. Supervisor B.T. Jacobs controverted the claim, stating that the injury could not have occurred as reported. On March 17, 2004 the employing establishment controverted the claim, stating that on the date of the alleged injury, the route inspector observed no injury as he followed appellant to her vehicle as she was pushing her cart.

On March 23, 2004 the Office requested additional information regarding the details of the alleged injury, including names of witnesses and the reason for appellant's delay in seeking medical treatment.

A March 19, 2004 investigative memorandum reflected that appellant told her supervisor that a mail hamper moved quickly down an incline on February 18, 2004. When she attempted to slow it down, the hamper allegedly ran over her foot, whereupon she twisted her back and left knee. Supervisor Jacobs reported that one week prior to the alleged incident, appellant told him that, if she was required to use a large hamper, she would probably have an accident.

In an undated statement, Paul Mercer of the employing establishment indicated that appellant had told him on February 17, 2004 that she did not want to use the large hamper and would hurt herself if she had to use it.

On March 19, 2004 Supervisor Jacobs further controverted the claim. He stated that appellant had told him prior to the alleged date of injury that she did not want to use a large hamper and would have an accident if she did. On February 18, 2004 he walked no more than six feet behind appellant as he timed her moving the large hamper to her vehicle for loading. Supervisor Jacobs stated that he did not observe an injury and that appellant made no sounds or expressions to indicate pain. Eight days later, she notified him that she had sustained an injury to her back and knee on February 17, 2004. The following day, she corrected the date to reflect that the injury occurred on February 18, 2004. Supervisor Jacobs reported that appellant refused to see a physician.

Appellant submitted reports from Dr. Robert E. Lager, a Board-certified internist, dated March 1 and April 8, 2004. He diagnosed lumbar strain and left knee strain. A second supplemental transmittal letter regarding the March 19, 2004 investigative memorandum reflected that Supervisor Jacobs observed appellant slow her cart down on February 18, 2004. He further stated that it would have been impossible for the cart to have run over her foot, because she was behind the cart the entire time.

In response to questions posed by the Office, appellant stated that she felt pain in her back and knee when the cart went over her foot. She informed Supervisor Jacobs that she was having problems but delayed seeking medical treatment because "it took 24 [to] 48 hours [for the injury] to manifest itself fully." Appellant alleged that, on February 18, 2004, Supervisor Jacobs was in front and to the right of a large cart, as she pushed it down a ramp and into a parking lot.

When she lost control of the cart, Supervisor Jacobs grabbed the front of the cart and pushed it back towards her, causing it to swing around towards her and roll over her foot.

In a February 25, 2004 accident report, Supervisor Jacobs noted that appellant claimed that she had been injured when a mail cart rolled over her foot on February 18, 2004. Appellant also claimed that she twisted her back and hurt her knee when she tried to slow the cart down. Supervisor Jacobs reiterated that he did not observe any injury on the date in question.

In an April 1, 2004 statement, Kathryn Peterson, a coworker, noted that appellant told her that she had been injured by a runaway mail cart during the first week of mail count. She could not remember clearly how the alleged accident happened. Appellant submitted a timeline alleging that Supervisor Jacobs had failed to file a CA-1 form after participating in her February 18, 2004 accident by pushing the cart towards her. Appellant claimed that she reported to Supervisor Jacobs on February 20, 2004 that she was "having problems" due to the injury. When she asked Supervisor Jacobs to file an accident report, he allegedly stated that he was "too busy." Appellant indicated that, on February 26, 2004, Supervisor Jacobs asked her to see a doctor.

Appellant submitted unsigned notes from Dr. Lager dated March 1 and April 8, 2004. She reported that she lurched her back and injured her left knee when a runaway cart rolled over her foot. In an undated and unsigned report of an initial evaluation, Dr. Lager stated that appellant complained of low back and left knee pain that began in February 2004, when she was hit by a mail cart.

In a merit decision dated April 30, 2004, the Office denied appellant's claim, finding that the evidence was insufficient to establish that she had sustained an injury on February 18, 2004 as alleged. The Office found that appellant had failed to establish the fact of injury.

On May 24, 2004 appellant requested an oral hearing. She submitted a report dated April 30, 2004, indicating that she could return to work without restrictions. Appellant submitted statements from several coworkers supporting her allegations of a pattern of abuse and improper behavior on the part of management with regard to the processing of injury claims. She submitted physical therapy notes and reports for the period April 12 through November 24, 2004. The record contains a notice of an official "14-day no time off suspension" issued to appellant for failure to immediately report an accident. The notice reflects that on February 25, 2004 she reported an injury that occurred on February 18, 2004, in violation of employing establishment rules and regulations.

In a report dated September 1, 2004, Dr. Thomas N. Conner, a Board-certified orthopedic surgeon, diagnosed left knee derangement. He stated that appellant had sustained a work injury back in February 2004 and continued to experience problems with her knee. On November 24, 2004 Dr. Lager stated that he had been caring for appellant since March 1, 2004 for injuries sustained at work on February 18, 2004 which resulted in a lumbar strain and a left knee strain, which was later determined to be a tear in the medial meniscus. He further stated that there was clear documentation from the time of the injury to the present that appellant had sustained a work-related injury.

At the December 13, 2004 hearing, appellant testified regarding the events of February 18, 2004. She alleged that Supervisor Jacobs was in front and to the right of the large cart as she pushed it down the ramp and into the parking lot. When she lost control of the cart, Supervisor Jacobs grabbed the front of it and pushed it back towards her, causing the cart to sweep around, go into her body and roll over her left leg. After the cart stopped, he asked if she was alright. She responded that she thought she was alright. Supervisor Jacobs then allegedly asked if appellant wanted to go home. Appellant stated that she told Supervisor Jacobs that she did not want to go home, but informed him that the cart had rolled over her foot. She noted that Supervisor Jacobs may not have seen the cart roll over her foot. Appellant indicated that she injured her back and knee when she twisted her body at the moment the heavy cart was on top of her left foot. She informed Supervisor Jacobs on February 20, 2004 that she was aware that she was injured two days earlier. On February 23, 2004 appellant reportedly asked the supervisor to file an accident report, which he filed the next day. She testified that Supervisor Jacobs asked her to see a physician on February 26, 2004. A coworker, Cathy Disen, stated that several days after the alleged incident, appellant appeared injured.

In a January 5, 2005 statement, the employing establishment noted inconsistencies in appellant's statements regarding the alleged injury. Appellant originally stated that she was injured when she tried to stop a runaway cart. At the hearing appellant testified that Supervisor Jacobs pushed the cart onto her foot.

By decision dated March 7, 2005, the Office hearing representative affirmed the April 30, 2004 decision, finding that appellant failed to establish that the claimed incident of February 18, 2004 occurred as alleged.

On January 16, 2006 appellant requested reconsideration of the March 7, 2005 decision.

Evidence submitted subsequent to the March 7, 2005 decision included a copy of Dr. Conner's previously submitted September 1, 2004 report; a report of a magnetic resonance imaging (MRI) scan dated September 1, 2004; a March 22, 2005 request for a left knee arthroscopy; copies of previously submitted progress notes dated March 1, 2004 from Dr. Lager; a copy of Dr. Lager's previously submitted letter dated November 24, 2004; and a letter to appellant from Dr. Lager dated November 8, 2005. Dr. Lager reiterated the history of the February 18, 2004 injury as reported by appellant. Indicating that the description of reported events had been outlined in his March 1, 2004 note, Dr. Lager stated: "There was a loaded cart of mail that went down an incline, it started to roll away, you grabbed it, lurched your back and injured your left knee."

By decision dated May 2, 2006, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative)

[2] 5 U.S.C. § 8101 *et seq.*

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."[3]

The application for reconsideration 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.[4]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[5] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

ANALYSIS

Appellant has not alleged or shown that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by the Office. She merely asked the Office to reconsider her claim. Moreover, appellant has failed to submit relevant and pertinent new evidence not previously considered by the Office. Therefore, the Board finds that appellant failed to meet any of the standards under section 8128(a) of the Act which would require the Office to reopen the case for merit review.

Subsequent to the Office's March 7, 2005 decision, appellant submitted numerous copies of previously submitted documents, including a copy of Dr. Conner's September 1, 2004 report; copies of progress notes dated March 1, 2004 from Dr. Lager; and a copy of Dr. Lager's letter dated November 24, 2004. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.[7]

Appellant also submitted a September 1, 2004 MRI scan report and a March 22, 2005 request for a left knee arthroscopy. In its March 7, 2005 decision, the hearing representative found that appellant had failed to establish the fact of injury. Therefore, insofar as the medical reports submitted in support of appellant's request for reconsideration addressed appellant's diagnosed condition and its cause, the reports are irrelevant to the issue at hand. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8]

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[3] 20 C.F.R. § 10.605.

[4] 20 C.F.R. § 10.606.

[5] *Donna L. Shahin*, 55 ECAB ___ (Docket No. 02-1597, issued December 23, 2003).

[6] 20 C.F.R. § 10.608 .

[7] *See Manuel Gill*, 52 ECAB 282 (2001).

[8] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

In his November 8, 2005 letter, Dr. Lager reiterated the history of the alleged February 18, 2004 injury as reported by appellant, indicating that the description of reported events had already been outlined in his March 1, 2004 note. Although Dr. Lager's November 8, 2005 letter was not previously considered by the Office, its contents are duplicative of evidence already in the case record and, therefore, have no evidentiary value.[9]

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by the Office. Nor has she submitted any new evidence relevant to the issue of the fact of injury. Accordingly, appellant has failed to meet any of the standards under section 8128(a) of the Act, which would require the Office to reopen the case for merit review. The Board finds that the Office did not abuse its discretion in denying her request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2006 is affirmed.

Issued: September 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[9] *See Manuel Gill, supra* note 7.