

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

N.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, LONG BEACH AIRPORT,)
Long Beach, CA, Employer)

**Docket No. 06-1470
Issued: September 12, 2006**

Appearances:
N.C., *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 June 19, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' nonmerit decision dated May 26, 2006, denying his request for reconsideration of a June 1, 2005 merit decision. The Board's jurisdiction to consider and decide 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. §§ 10.501.2(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 February 15, 2005 appellant, then a 39-year-old part-time passenger screener, filed an occupational disease claim alleging that he sustained degenerative disc disease due to factors of his federal employment. He submitted medical evidence in support of his claim.

On April 29, 2005 the Office advised appellant that the medical evidence submitted did not contain a complete medical and factual history and failed to provide sufficient rationale explaining how his degenerative disc disease was caused or aggravated by factors of his employment.

By decision dated June 1, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his degenerative disc disease was caused or aggravated by factors of his employment.

In a letter dated May 16, 2006, appellant requested reconsideration. He did not submit any additional evidence or argument.

By decision dated May 26, 2006, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ 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 his 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.⁴ 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.⁵

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

ANALYSIS

The merits of the Office's denial of appellant's claim are not within the jurisdiction of the Board on this appeal. Therefore, the only issue on appeal is whether appellant submitted evidence or argument sufficient to warrant further merit review.

Appellant did not submit any additional evidence or legal argument when he submitted his reconsideration request, nor did he allege that the Office erroneously applied or interpreted a specific point of law. Because 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 properly denied his 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 May 26, 2006 is affirmed.

Issued: September 12, 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