

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

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**S.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Toledo, OH, Employer**

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**Docket No. 06-1916  
Issued: February 14, 2007**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 17, 2006 appellant filed a timely appeal from an August 1, 2006 Office of Workers' Compensation Programs' nonmerit decision denying reconsideration. Because the August 1, 2006 decision is the only decision issued by the Office since the Board issued a merit decision dated June 19, 2006, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

This is the second appeal before the Board. Appellant, a 39-year-old letter carrier, injured her neck, back, chest, pelvis, wrist and knees when she was involved in an automobile accident on February 14, 2003, which the Office accepted for cervical, thoracic and lumbar strains and right hip and knee contusion. On January 2, 2004 appellant filed a Form CA-7 claim

for continuing compensation, claiming compensation for wage loss from November 13 to December 9, 2003. On March 22, 2004 she also filed a Form CA-2a claim for recurrence of disability, beginning January 5, 2004 for continuing compensation from March 29 to May 31, 2004.

By letter dated July 5, 2006, appellant's attorney requested reconsideration. Appellant submitted a June 8, 2006 report from Dr. Jay Nielson, a Board-certified family practitioner, who asserted that there was medical evidence in the record indicating that appellant's L5 disc herniation was causally related to the February 2003 work injury. He stated:

"We have proven that the facets are responding [to] the blocks and we have proven that serial MRI [magnetic resonance imaging] [scans] are showing rapid progression of the L5 area and pathology. She has had a new development since last visit, she has a new possible hernia in the right abdomen at the UQ and she has no incisions in this area. The [family physician] is concerned that this is either a hernatoma or a hernia from the [February 2003 work injury].... She is having lots of stress at work and restrictions are in place and being followed."

By decision dated August 1, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>1</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>2</sup>

### **ANALYSIS**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Dr. Nielson indicated in his report that the medical evidence in the record showed appellant's L5 disc herniation was causally related to the February 2003 work injury and related findings from diagnostic tests and examinations indicating that the L5 herniation was progressing. He also noted the possibility of a new hernia in the right abdomen. The Board has held that the submission of evidence which does not address the particular issue involved in the

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<sup>1</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>2</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

case does not constitute a basis for reopening the claim.<sup>3</sup> Dr. Nielson's report did not present any additional evidence pertaining to the relevant issue of whether appellant sustained a recurrence of disability from November 13 to December 9, 2003 and from January 5 to May 28, 2004. His opinion that appellant's L5 disc herniation was causally related to the February 2003 work injury is cumulative and repetitive of opinions that were presented and rejected by the Office and the Board. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 14, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>3</sup> See *David J. McDonald*, 50 ECAB 185 (1998).