

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Austin, TX, Employer**

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**Docket No. 07-230
Issued: July 6, 2007**

Appearances:
Ron Watson, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2006 appellant filed a timely appeal of the May 12, 2006 nonmerit decision of the Office of Workers' Compensation Programs. The latest merit decision in the case is dated August 24, 2005. Because appellant filed her appeal more than a year after the August 24, 2005 decision, the Board cannot exercise jurisdiction over the merits of the claim.¹ Therefore, the only decision properly before the Board is the Office's May 12, 2006 decision denying reconsideration.

ISSUE

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

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d) (2006).

FACTUAL HISTORY

On September 7, 2004 appellant, then a 49-year-old clerk, filed an occupational disease claim for carpal tunnel syndrome. She identified February 9, 2004 as the date she first became aware of her condition. But it was not until August 9, 2004 that appellant reportedly was first aware that the condition was employment related. She indicated that she had carried mail for nine years and had also done an extreme amount of data input for eight years. Appellant explained that she started having trouble holding the telephone, driving the car and typing letters due to numbness and pain. She also stated that she had undergone an electromyography, which was positive for carpal tunnel syndrome. The employing establishment reported that appellant last worked on June 9, 2003.

After further development of the record, the Office denied the claim in a decision dated August 24, 2005. The reason for the denial was that appellant had not filed her claim in a timely manner. The Office found that appellant should have been aware of the relationship between her condition and her employment by 1994, when her employment-related activities ceased.

On April 28, 2006 appellant submitted the “appeal request form” that accompanied the August 24, 2005 decision. She placed a checkmark in the designated area for requesting reconsideration before the Office. Appellant did not submit additional evidence or otherwise explain the basis for her request for reconsideration.

By decision dated May 12, 2006, the Office denied reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees’ Compensation Act, the Office has the discretion to reopen a case for review on the merits.² Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

Appellant’s April 28, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did

² 5 U.S.C. § 8128(a) (2000).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁵ She also failed to satisfy the third requirement under section 10.606(b)(2). Appellant did not submit any relevant and pertinent new evidence with her April 28, 2006 request for reconsideration and, therefore, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).⁶ Because she was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the April 28, 2006 request for reconsideration.

CONCLUSION

The Office properly denied appellant's request for a review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁵ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

⁶ 20 C.F.R. § 10.606(b)(2)(iii).