

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

E.W., Appellant

and

**DEPARTMENT OF COMMERCE, U.S.
CENSUS BUREAU, Durham, NC, Employer**

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**Docket No. 07-455
Issued: July 24, 2007**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 25, 2006 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its October 7, 2003 decision denying appellant's claim for an employment-related recurrence of disability. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal on December 7, 2006, the Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

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

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record also contains a June 8, 2006 decision of the Board affirming the Office's denial of a reconsideration request. In the absence of further review by the Office on the issue addressed by the decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

FACTUAL HISTORY

This is the second appeal in this case. On June 8, 2006 the Board issued a decision finding that the Office properly refused to reopen appellant's case for further review of the merits on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error in the Office's October 7, 2003 decision.² On June 21, 2000 appellant, then a 41-year-old census enumerator, filed a traumatic injury claim alleging that she sustained neck and back injuries when her vehicle was struck from behind by another vehicle on June 5, 2000. The Office accepted that appellant sustained cervical and thoracic strains on that date. Appellant filed a claim alleging that she sustained a recurrence of disability on March 31, 2003 due to her June 5, 2000 employment injury and the Office denied her claim in an October 7, 2003 decision.

In support of the untimely reconsideration request, appellant submitted medical evidence including a November 7, 2003 report of her attending Board-certified orthopedic surgeon and a July 15, 2003 report of her attending Board-certified neurologist. The Board determined that the Office properly found that these reports were not relevant because they provided no clear opinion that appellant's continuing neck and back problems were related to the June 5, 2000 accident and did not indicate that she sustained an employment-related recurrence of disability. The Board concluded that the Office properly found that the evidence and argument submitted by appellant did not raise a substantial question concerning the correctness of the Office's October 7, 2003 decision and did not show clear evidence of error in that decision.³ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In an undated letter received by the Office on October 6, 2006, appellant again requested reconsideration of her claim and stated, "I have sufficient evidence to show that I am disable[d]." In an October 25, 2006 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or

² Docket No. 06-165 (issued June 8, 2006).

³ Appellant argued that she sustained a brain injury on June 5, 2000 which led her to sustain a recurrence of disability, but the Board found that this argument would not be relevant as the main issue of the present case is medical in nature and must be resolved by the submission of medical evidence.

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁷ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

In support of her October 2006 reconsideration request, appellant argued that she had sufficient medical evidence to show that she sustained an employment-related recurrence of disability on March 31, 2003. However, this argument would not be relevant to the main issue of the present case as that issue is medical in nature and must be resolved by the submission of medical evidence. Appellant did not submit any medical evidence in connection with her reconsideration request. She has not established that the Office improperly denied her request for further review of the merits of her claim under section 8128(a) of the Act, because the argument she submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 25, 2006 decision is affirmed.

Issued: July 24, 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