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

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| **K.C., Appellant** | ) | |
| **and** | ) | **Docket No. 06-1643** |
| | ) | **Issued: June 22, 2007** |
| **U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, New York, NY, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

Oral Argument May 10, 2007

## DECISION AND ORDER

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

### ***JURISDICTION***

On July 12, 2006 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs dated February 21, 2006 denying her request for reconsideration. As the most recent Office merit decision was issued on January 27, 2005, more than one year before the filing of this appeal, the Board does not have jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

### ***ISSUE***

The issue is whether 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).

### ***FACTUAL HISTORY***

On October 18, 1990 appellant, then a 42-year-old part-time flexible mail handler, filed a traumatic injury claim alleging that on October 18, 1990 she injured her shoulder when, while breaking up mail, she felt a pain in her right shoulder. The Office accepted appellant's claim for bursitis of the right shoulder.

In a report dated June 11, 2001, Dr. Placido Menezes, a Board-certified orthopedic surgeon, noted that appellant had tenderness over the cervical spinous processes and moderate degree of paravertebral spasms and limitation of movements of the cervical spine.

On February 19, 2002 the Office referred appellant to Dr. Lester Lieberman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated March 7, 2002, Dr. Lieberman opined that appellant's bursitis of the right shoulder had resolved. He noted that appellant was on nonwork-related disability and should not return to work as a mail handler. Dr. Liberman indicated that she could work light duty in a sedentary position but not in an area where cold air would blow on her.

By letter dated October 9, 2002, the Office referred appellant to Dr. Gary Korenman, a Board-certified neurologist, for a second opinion. In a report dated October 15, 2002, he stated that appellant had a right cervical radiculopathy as a residual of her October 18, 1990 employment injury. Dr. Korenman opined that appellant could work on a part-time basis for four hours a day as long as she avoided lifting, carrying, pushing or pulling. He noted no need for further treatment.

On November 27, 2002 the Office referred appellant to Dr. Ronald Richman, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated December 26, 2002, Dr. Richman noted that both appellant's herniated disc of C5-6 and cervical radiculopathy with right shoulder bursitis had resolved and that appellant "does not appear to have any disabling residual from them." He noted that appellant did have "a concurrent nonwork-related disability which is secondary to phlebitis and the complications of this problem and being actively treated at this time as well." Dr. Richman recommended a sedentary job and rehabilitation service. He did not see any need for further treatment with regard to her work associated injuries.

On January 21, 2003 the Office proposed to terminate appellant's compensation because the weight of the medical evidence supported that appellant was no longer disabled due to the employment injury of October 18, 1990 nor was there any need for continuing medical treatment. In response, appellant submitted a January 31, 2003 report from Dr. Menezes, who noted that appellant was complaining of increasing pain in the cervical spine radiating to the upper extremities associated with paresthesias of the hand. Dr. Menezes also noted that appellant complained of pain and limitation of movements of the right shoulder. He diagnosed herniated cervical discs with reflex sympathetic dystrophy.

By decision dated February 24, 2003, the Office terminated appellant's compensation effective February 23, 2003.

On August 25, 2003 appellant requested reconsideration. By decision dated October 10, 2003, the Office found that the evidence and argument was not sufficient to warrant modification of the previous decision. On October 7, 2004 appellant requested reconsideration. By decision dated January 27, 2005, the Office denied modification of its prior decisions.

On January 26, 2006 appellant requested reconsideration. She argued that the Office should have referred her case to an Office medical adviser for review as the Office found that her

physician's report was not properly written. Appellant also submitted a medical report dated October 6, 2004 by Dr. Menezes and a September 16, 2004 report of a magnetic resonance imaging scan of her spine, documents that had been submitted previously. She also submitted a January 10, 2005 treatment note from Dr. Menezes and an electrodiagnostic report dated September 22, 2004 by Dr. Joseph C. Yellin, a Board-certified neurologist.

By decision dated February 21, 2006, the Office denied appellant's request for reconsideration without reviewing the merits of the case.

## ***LEGAL PRECEDENT***

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, 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.[1]

## ***ANALYSIS***

In the instant case, the Office terminated appellant's compensation effective February 23, 2003 for the reason that the medical evidence established that she no longer had any injury-related disability after that date. The Office based this decision on the opinion of the impartial medical examiner, Dr. Richman, who resolved the conflict in the medical evidence between appellant's treating physician, Dr. Menezes, and the second opinion physicians, Drs. Lieberman and Korenman, who determined that appellant no longer had any disabling residuals from her accepted injury.

The Board finds that appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant contends that the Office should have consulted an Office medical adviser if it found that her doctor's report was improperly written. However, the Office referred appellant to two second opinion physicians and an impartial medical examiner for further evaluation of her claim and made its conclusion to terminate compensation benefits after reviewing all the medical reports. With regard to the evidence submitted with her request, the Board notes that the October 6, 2004 report by Dr. Menezes and the September 16, 2004 report of a magnetic resonance imaging scan of her spine are duplicative of reports already in the record. Furthermore, the January 10, 2005 report by Dr. Menezes merely included statements regarding appellant's examination that were cumulative of reports in the record previously considered. The Board has held that evidence that repeats or duplicates that already of record does not constitute a basis for reopening a claim for merit review.[2] Dr. Yellin did not address whether appellant had any residuals from her accepted injury; he merely listed results from nerve conduction studies.

[1] 20 C.F.R. § 10.606(b)(2)(i-iii).

[2] *See James E. Norris*, 52 ECAB 93 (2000).

The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[3]

Appellant has not submitted any relevant and pertinent new evidence, advanced a legal argument not previously considered by the Office, nor argued that the Office erroneously interpreted a specific point of law. Therefore, appellant has not met the criteria to have the Office reopen her case for review on the merits.

## ***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 February 21, 2006 is affirmed.

Issued: June 22, 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

[3] *See David J. McDonald*, 50 ECAB 185 (1998).