

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

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N.M., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, Aguadilla, PR, Employer** )

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**Docket No. 07-768**  
**Issued: June 25, 2007**

*Appearances:*  
*Appellant, pro se*  
*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 January 25, 2007 appellant filed a timely appeal of the November 2, 2006 nonmerit decision of the Office of Workers' Compensation Programs. The latest merit decision in the case is dated October 11, 2005. Because he filed his appeal more than a year after the October 11, 2005 decision, the Board cannot exercise jurisdiction over the merits of the claim.<sup>1</sup> The only decision before the Board is the Office's November 2, 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).

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

## **FACTUAL HISTORY**

On November 10, 2004 appellant, then a 48-year-old transportation security screener, filed an occupational disease claim for a herniated disc in his lower back. He attributed his condition to performing bag inspections, which required lifting bags in excess of 50 pounds. Appellant identified September 3, 2004 as the date of injury, but he did not realize his back condition was employment related until September 7, 2004.<sup>2</sup>

Dr. Jorge L. Méndez Colón, a family practitioner, diagnosed spinal stenosis on September 7, 2004. He excused appellant from work until September 27, 2004. On September 14, 2004 Dr. Rebecca D. Quinoñes, a Board-certified physiatrist, diagnosed myositis of the right hip flexor and she excused appellant from work for two weeks. An October 8, 2004 lumbar magnetic resonance imaging (MRI) scan revealed a large left paracentral herniated nucleus pulposus at L4-5. The herniated disc impinged on the thecal sac and left neural foramina, which produced mild acquired spinal canal stenosis. In an October 14, 2004 report, Dr. Colón reiterated the findings reported on the recent MRI scan and he attributed appellant's back condition to his employment. He did not otherwise identify any specific employment activities. Dr. Colón's report identified September 3, 2004 as the date of injury and the history obtained from appellant was "low back injury."

The Office denied the claim by decision dated January 28, 2005.

Appellant requested reconsideration on March 17, 2005. He submitted a January 15, 2005 lumbar x-ray that revealed mild periarticular sclerosis at the facet joints. Appellant also submitted a February 18, 2005 report from Dr. Juan A. Lameiro, a neurosurgeon, who noted that he had been treating appellant for chronic lumbosacral and right hip pain. According to Dr. Lameiro, appellant claimed the symptomatology developed while manipulating heavy objects at work.

In a June 24, 2005 report, Dr. Colón noted that appellant came to his office on September 4, 2004 with complaints of low back pain and slow movements. He diagnosed a L4-5 broad disc bulge, which produced spinal canal stenosis. Dr. Colón explained that lifting heavy bags and rotating the upper body to release those bags caused the injury. However, later in his report, he was less definitive regarding the cause of injury, stating instead that appellant's injury "might" have occurred at work.

In an October 11, 2005 decision, the Office modified the prior decision to find that appellant established the incident. However, the Office denied the claim because appellant did not establish a causal relationship between his diagnosed low back and right hip conditions and the accepted employment incident.

On September 7, 2006 appellant again requested reconsideration. He claimed that his labor rights had been violated and that he could provide sworn statements from coworkers and supervisors attesting to what happened to him at work. The request, however, was not accompanied by any new evidence.

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<sup>2</sup> Appellant stopped working on September 3, 2004 and returned to work in a limited-duty capacity on October 18, 2004.

By decision dated November 2, 2006, the Office denied reconsideration.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### **ANALYSIS**

Appellant's September 7, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.<sup>6</sup> Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>7</sup> Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any relevant and pertinent new evidence with his September 7, 2006 request for reconsideration. As there was no relevant and pertinent new evidence for the Office to consider regarding causal relationship, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>8</sup> Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the September 7, 2006 request for reconsideration.

### **CONCLUSION**

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

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<sup>3</sup> 5 U.S.C. § 8128(a) (2000).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b).

<sup>6</sup> Appellant did not elaborate on how his so-called "labor rights" had been violated. His ability to produce sworn witness statements regarding the workplace circumstances that gave rise to his claimed injury is not entirely relevant to the issue on reconsideration. Appellant's station manager, supervisor and other coworkers are not competent to offer a medical opinion on causal relationship.

<sup>7</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 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