

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

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**E.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Surfside Beach, SC, Employer**

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**Docket No. 06-1926  
Issued: March 26, 2007**

*Appearances:*  
*John C. Bacot, Jr., Esq., 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 15, 2006 appellant, through his attorney, filed a timely appeal from a July 21, 2006 nonmerit decision denying his request for reconsideration.<sup>1</sup> As the last merit decision in this case was issued on August 3, 2005, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the July 21, 2006 nonmerit decision.

**ISSUE**

The issue is whether the Office properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128.

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<sup>1</sup> The appeal was postmarked August 10, 2006.

<sup>2</sup> 20 C.F.R. §§ 501.2(c) and 501.3.

## **FACTUAL HISTORY**

On June 13, 2005 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that he sustained “mental status changes, confusion, back pain, shortness of breath, numbness [and a] repetitive motion injury to [the] right shoulder” due to factors of his federal employment. He related that he injured his leg and left shoulder when he “fell at the top of a stairway” on May 18, 2005. Appellant stopped work on May 23, 2005 and did not return.

Appellant submitted hospital discharge summaries signed by a nurse dated May 25 and June 2, 2005. On June 24, 2005 the Office requested that he submit additional supporting factual evidence, including a detailed description of the employment factors to which he attributed each claimed condition. Appellant submitted a form report dated June 15, 2005 from Dr. Karen McCutcheon, who specializes in family practice. Dr. McCutcheon diagnosed a shoulder strain. She responded “yes” that the history of injury corresponded to that provided on the form of appellant falling while delivering packages on the second floor. Dr. McCutcheon also noted that he had auditory hallucinations. She opined that appellant was unable to work.

On July 12, 2005 appellant informed the Office that both he and his physician believed that his May 18, 2005 fall caused changes in his mental status and shortness of breath. He further indicated that he and Dr. McCutcheon believed that he sustained a repetitive motion injury to his right shoulder at work which began in August 2004.

In a form report dated July 19, 2005, Dr. McCutcheon diagnosed rotator cuff tendinitis and found that appellant was totally disabled from June 15, 2005 to the present. She noted a history of injury as appellant falling down stairs and injuring his right shoulder. Dr. McCutcheon checked “yes” that the condition was caused or aggravated by employment.

On July 20, 2005 the employing establishment noted that appellant was claiming an additional traumatic injury resulting from his May 18, 2005 fall at work. The employing establishment indicated that appellant had an accepted left shoulder condition under file number 062142971.<sup>3</sup>

By decision dated August 3, 2005, the Office found that appellant had not established that he sustained an injury in the performance of duty. It found that he had not established that the implicated employment factors occurred as alleged and had not submitted sufficient medical evidence to establish a diagnosed condition resulting from employment. The Office further determined that appellant had not established a consequential injury resulting from his fall at work on May 18, 2005.

On July 12, 2006 appellant requested reconsideration of his claim. He noted that he was submitting a psychological evaluation and the letter from Mr. Swain. By decision dated July 21,

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<sup>3</sup> In a statement received by the Office on July 25, 2005, Edworth Swaim Jr., a union president, related that appellant telephoned him on May 18, 2005 after he fell down stairs while delivering mail. He injured his back, shoulder and possibly knees and head. Subsequent to the fall, Mr. Swaim observed changes in appellant’s mood, physical condition and memory. On May 23, 2005 appellant telephoned Mr. Swaim sounding confused and ill. He was admitted to the hospital that date and again on May 31, 2005. Mr. Swaim reported that since his fall appellant was confused, unable to concentrate and forgetful.

2006, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant reopening his claim for merit review.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> 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.<sup>7</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>10</sup>

### **ANALYSIS**

Appellant requested reconsideration and asserted that he was submitting a psychological evaluation. The case record, however, does not contain a copy of the evaluation. He also resubmitted the letter from Dr. Swain already of record. However, 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>11</sup>

Appellant did not 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 submit new

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>9</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>10</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>11</sup> *Freddie Mosley*, 54 ECAB 255 (2002).

and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

On appeal appellant, through his attorney, contends that he submitted a neuropsychological evaluation to the Office with his request for reconsideration. As noted, however, the case record does not contain a copy of the evaluation.<sup>12</sup>

### **CONCLUSION**

The Board finds that the Office properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 21, 2006 is affirmed.

Issued: March 26, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> Appellant submitted evidence subsequent to the Office's July 21, 2006 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a request for reconsideration under 5 U.S.C. § 8128.