United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 07-260**
	)	**Issued: March 26, 2007**
U.S. POSTAL SERVICE, KENSINGTON STATION, Detroit, MI, Employer	)	

Appearances:
Steve Burt, 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 November 1, 2006 appellant filed a timely appeal of an August 28, 2006 decision of the Office of Workers' Compensation Programs which denied merit review. Because more than one year has elapsed between the most recent merit decision of the Office dated September 16, 2005 and the filing of this appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

FACTUAL HISTORY

On July 20, 2005 appellant, then a 41-year-old letter carrier, filed a Form CA-2, occupational disease claim, alleging that the continued walking, standing and climbing at work caused pain in her feet and knees and Morton's neuroma. She did not stop work. In a July 15, 2005 report, Dr. Luke Elliott, a Board-certified family physician, diagnosed Morton's neuroma

of the feet caused by appellant being on her feet for extended periods of time. He stated, "since [appellant] is at work on her feet for extended periods of time, these Morton's neuroma may be work related."

The employing establishment controverted the claim and submitted a form describing the hours worked by appellant from July 10, 2004 to June 25, 2005 which averaged 27.39 hours a week. By letter dated July 28, 2005, the Office informed appellant of the evidence needed to support her claim. Appellant was asked specific questions regarding her job duties and to provide a comprehensive medical report with medical reasons for the cause of the claimed condition. In an August 4, 2005 report, Dr. Elliott advised that he first saw her on May 17, 2005 with complaints of forefoot pain and signs of tenderness in the two and three web spaces. He diagnosed Morton's neuroma, recommended medication and restricted overtime at work. Dr. Elliott noted that appellant returned on June 29, 2005 with continued pain. He recommended physical therapy. She returned on August 1 and 4, 2005 with complaints of heel and midfoot pain of both feet, left much greater than right. Examination on August 4, 2005 demonstrated heel tenderness. Dr. Elliott opined, "now I believe [appellant] has plantar fasciitis that is not responding to conservative therapy" and recommended referral to an orthopedic surgeon. In an attached disability slip, he recommended that she stay off work from August 1 to 5, 2005 and then return to half days.

By decision dated September 16, 2005, the Office denied the claim on the grounds that the medical evidence was insufficient to establish that the claimed foot condition was caused by employment factors.

On July 11, 2006 appellant requested reconsideration and submitted a statement describing the job duties that she believed caused her condition. On July 28, 2006, in answer to specific Office questions, Dr. Elliott stated that appellant's diagnosis was plantar fasciitis. He stated: "I still feel with [appellant's] walking type of employment, her plantar fasciitis is related to this." He further stated that on May 13, 2005; "I thought she had Morton's neuroma but this seemed not to be the case," reiterating that [appellant's] main problem was plantar fasciitis. Dr. Elliott concluded that "[appellant] appears at this time to have a permanent condition."

In an August 28, 2006 decision, the Office denied appellant's request for reconsideration. The Office found that Dr. Elliott's July 28, 2006 report was irrelevant and of insufficient evidentiary value to warrant further merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[1] vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[2] Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8128(a).

one of the standards described in section 10.606(b)(2).[3] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (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.[4] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated August 28, 2006 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated September 16, 2005 and the filing of her appeal with the Board on November 1, 2006, the Board lacks jurisdiction to review the merits of her claim.[6]

With her July 11, 2006 reconsideration request, appellant merely described the job duties that she felt caused her condition. She thus, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant was 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).[7]

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant submitted Dr. Elliott's comments dated July 28, 2006, he merely reiterated findings and conclusions described in his previous reports that were reviewed by the Office in its September 16, 2005 decision. 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.[8] Dr. Elliott's July 28, 2006 comments are insufficient to warrant merit review. As appellant did not submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied her reconsideration request.[9]

[3] 20 C.F.R. § 10.608(a).

[4] 20 C.F.R. § 10.608(b)(1) and (2).

[5] 20 C.F.R. § 10.608(b).

[6] 20 C.F.R. § 501.3(d)(2).

[7] 20 C.F.R. § 10.606(b)(2).

[8] *Freddie Mosley*, 54 ECAB 255 (2002).

[9] *Id.*

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration 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 August 28, 2006 be 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