

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 08-242
Issued: April 22, 2008**

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 1, 2007 appellant filed a timely appeal from a March 20, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. As the last merit decision by the Office was issued more than one year from the filing date of the appeal, the Board lacks jurisdiction to review the merits of this case.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the March 20, 2007 nonmerit decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128.

¹ 20 C.F.R. §§ 501.2(c), 501.3.

FACTUAL HISTORY

This case has previously been before the Board. On March 6, 2006 the Board affirmed July 23, November 12 and December 6, 2004 and May 19, 2005 decisions denying appellant's claim for a schedule award for the left upper extremity.² The Board determined that the opinion of Dr. Martin L. Bloom, a Board-certified orthopedic surgeon and impartial medical examiner, established that he had no impairment of a scheduled member. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On December 27, 2006 appellant requested reconsideration of the denial of his claim for a schedule award. In support of his request, he asserted that he had enclosed an October 24, 2006 decision from the Social Security Administration (SSA), a May 15, 2006 evaluation by Dr. Son Hoang, Board-certified in family practice, and a statement from an impartial vocational expert.

In an October 24, 2006 decision, an administrative law judge with the SSA found that appellant was disabled as defined by the Social Security Act beginning September 21, 2004. The record does not contain a report from Dr. Hoang or a statement by a vocational expert.

By decision dated March 20, 2007, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant reopening his case 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,³ 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵ 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.⁶

² Docket No. 05-1470 (issued March 6, 2006). The Office accepted that on June 13, 2002 appellant, then a 42-year-old truck driver, sustained a herniated nucleus pulposus at C4-5. On January 28, 2003 he underwent an anterior cervical discectomy and fusion at C4-5. Appellant returned to part-time limited-duty employment on September 2, 2003.

³ 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."

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

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.⁷ 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.⁸ 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.⁹

ANALYSIS

By decision dated March 6, 2006, the Board affirmed the Office's denial of appellant's claim for a schedule award based on the finding of Dr. Bloom, the impartial medical examiner. On December 27, 2006 appellant requested reconsideration. He indicated that he was submitting a May 15, 2006 report from Dr. Hoang and a finding by a vocational expert. The record, however, does not contain a report by Dr. Hoang or a statement from a vocational expert.

In a decision dated October 24, 2006, an administrative law judge with the SSA determined that appellant was disabled beginning September 21, 2004. It is well established, however, that decisions of other federal agencies or governmental bodies are not dispositive to issues raised under the Federal Employees' Compensation Act.¹⁰ Decisions made by such tribunals are pursuant to different statutes which have varying standards for establishing eligibility for benefits.¹¹ The administrative law judge's finding that appellant is disabled under the provisions of the Social Security Act is not relevant to the issue of whether he sustained a permanent impairment of a scheduled member such that he is entitled to a schedule award. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹²

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 constitute pertinent new 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.¹³

⁷ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹⁰ 5 U.S.C. § 8107-8193.

¹¹ *See Andrew Fullman*, 57 ECAB ____ (Docket No. 05-967, issued May 12, 2006).

¹² *Freddie Mosley*, 54 ECAB 255 (2002).

¹³ Appellant submitted new evidence with his appeal. The Board, however, has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review 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 March 20, 2007 is affirmed.

Issued: April 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board