

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

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**A.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 07-2187  
Issued: December 2, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 24, 2007 appellant filed a timely appeal of a May 25, 2007 decision of the Office of Workers' Compensation Programs, denying merit review of her claim. Since more than one year has elapsed between the last merit decision on March 8, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim, pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2) and 501.6(c) and (d).

**ISSUE**

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. By decision dated September 11, 2002, the Board affirmed the Office's merit decisions dated March 19 and December 12, 2001.<sup>1</sup> The

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<sup>1</sup> Docket No. 02-342 (issue September 11, 2002).

Board found appellant had not established an emotional condition causally related to compensable work factors. The history of the case is provided in the Board's decision and is incorporated herein by reference.

On December 6, 2004 appellant requested reconsideration of her claim.<sup>2</sup> She stated that she was required to perform both segments of her bid assignment due to overstaffing at the window area. Appellant submitted additional evidence, including an employing establishment accident report (Form PS 1769) signed on January 5, 2001 by Barbara Holman, supervisor. She indicated that Ms. Holman was not her immediate supervisor.

By decision dated March 8, 2006, the Office denied modification of its prior decision.

In a letter dated March 4, 2007, appellant requested reconsideration. She submitted the instructions to the PS 1769 accident form. The form states that the supervisor of the employee or operation must complete the form for all accidents. Appellant argued that the accident report was completed by Ms. Holman. She stated that Karen Harris, who also signed the accident report, was not her supervisor.

In a decision dated May 25, 2007, the Office determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.<sup>3</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>4</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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 evidence not previously considered by the Office.<sup>5</sup>

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 one of these standards. If

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<sup>2</sup> Appellant had requested reconsideration on September 9, 2003, but the application was filed under another claim.

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.605 (1999).

<sup>5</sup> *Id.* at § 10.606(b)(2).

reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### ANALYSIS

Appellant filed a claim for compensation alleging that she sustained an emotional condition as a result of administrative actions of the employing establishment. The claim was denied on the grounds that she had not alleged and substantiated compensable work factors. To require the Office to reopen the case for merit review on reconsideration, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2). In this case, appellant submitted a March 4, 2007 application for reconsideration and the instructions to an employing establishment accident (Form PS 1769).

As to the specific requirements of 20 C.F.R. § 10.606(b)(2), appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Her argument is that the instructions to the accident form establish error by the employing establishment regarding the accident report. Appellant previously submitted the actual accident report and alleged the report was not signed by her immediate supervisor. The instructions form provides only general information that the supervisor of the employee or operation involved must complete. The evidence submitted does not address the specific accident report filed and does not provide new and relevant evidence on the issue of a compensable work factor in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Pursuant to 20 C.F.R. § 10.608, the Office properly declined to reopen the case for merit review.

### CONCLUSION

The application for reconsideration did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly refused to reopen the claim for review of the merits.

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<sup>6</sup> *Id.* at § 10.608.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 25, 2007 is affirmed.

Issued: December 2, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board