

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

B.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 08-1074
Issued: December 15, 2008**

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 February 27, 2008 appellant filed a timely appeal of a December 12, 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 December 12, 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 refused to reopen the case for merit review pursuant to 5 U.S.C § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

The Office accepted that appellant sustained bilateral knee contusions and a right shoulder dislocation in the performance of duty on December 20, 1996. It initially terminated compensation for wage-loss and medical benefits effective April 18, 2004. By decision dated February 1, 2005, an Office hearing representative reversed the termination decision, finding that

the February 11, 2004 report of Dr. Sounder Eswar, a Board-certified orthopedic surgeon selected as a referee physician, was insufficient to meet the Office's burden of proof. The hearing representative directed the Office to prepare a proper statement of accepted facts and refer appellant for a new examination by Dr. Eswar.

Appellant was advised of a scheduled appointment with Dr. Eswar on December 12, 2005. She did not attend the scheduled examination. By decision dated January 12, 2006, the Office suspended compensation benefits on the grounds that appellant had obstructed an examination under 5 U.S.C. § 8123(d). In a decision dated December 12, 2006, an Office hearing representative affirmed the January 12, 2006 decision. The hearing representative also finalized an overpayment of \$224.58 resulting from the failure to deduct health benefit premiums from January 1 to March 30, 1998 and denied waiver of the overpayment.

By letter dated November 16, 2007, appellant requested reconsideration of the December 12, 2006 Office decision.¹ She stated that her condition was worsening. Appellant submitted medical evidence from Dr. Silvester Lango, an orthopedic surgeon, finding that she remained totally disabled for work. In a report dated September 5, 2007, Dr. Calin Moucha, an orthopedic surgeon, provided results on examination and diagnosed severe bilateral knee arthritis. Appellant also submitted a notice of proposed separation dated October 31, 2007 from the employing establishment.

By decision dated December 12, 2007, the Office determined that appellant's application for reconsideration was insufficient to warrant further merit review.

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.² 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."³

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

¹ The record also contains a final decision dated August 21, 2007 regarding compensation through April 17, 2004. Appellant did not request review of this decision by the Board; the record indicated that appellant was pursuing appeal rights with the Branch of Hearings and Review.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.605 (1999).

considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.⁴

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 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.⁵

ANALYSIS

The December 12, 2006 Office merit decision affirmed the suspension of compensation under 5 U.S.C. § 8123(d) for appellant's failure to attend a scheduled examination with Dr. Eswar. The decision also finalized an overpayment of compensation of \$224.58 resulting from the failure to deduct health benefit premiums from January 1 to March 30, 1998. To require the Office to reopen the case for review of the merits of these issues, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2).

In a application for reconsideration 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. She stated that her condition was getting worse and she submitted medical evidence regarding her continuing treatment. An attending physician, Dr. Lango, opined that appellant was totally disabled for work. Appellant also submitted a notice of proposed separation from the employing establishment due to the inability to perform the essential functions of the position. The evidence submitted, however, is not relevant and pertinent to the issues adjudicated in the December 12, 2006 merit decision. The suspension of compensation was based on appellant's failure to attend a scheduled examination with a referee physician, Dr. Eswar. The evidence submitted is not relevant and pertinent to that issue. In addition, appellant did not submit any new and relevant evidence regarding the overpayment of compensation.

The Board accordingly finds that appellant did not meet any of the standards set forth at 20 C.F.R. § 10.606(b)(2). 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 relevant and pertinent evidence not previously considered by the Office. Pursuant to 20 C.F.R. § 10.608, the Office properly declined to review the merits of the claim.

CONCLUSION

The application for reconsideration did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and therefore merit review of the claim was not warranted.

⁴ *Id.* at § 10.606(b)(2).

⁵ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2007 is affirmed.

Issued: December 15, 2008
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