

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

_____)
S.J., Appellant)
)
and) **Docket No. 08-1227**
) **Issued: December 18, 2008**
U.S. POSTAL SERVICE, GENERAL MAIL)
FACILITY, Memphis, TN, Employer)
_____)

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 March 18, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated August 9, 2007 which denied her request for reconsideration. Because more than one year has elapsed between the September 8, 2006 merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On February 14, 2000 appellant, then a 49-year-old clerk, filed a traumatic injury claim alleging that on February 9, 2000 she injured her back and leg while bending over to load food onto a hamper. The Office accepted the claim for a lumbar strain on July 25, 2000.

On February 11, 2005 the Office referred appellant to Dr. Carl Huff, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated March 3, 2005, Dr. Huff concluded that appellant no longer had any residuals or disability due to her accepted lumbar strain. He concluded, based upon a review of the medical evidence and physical examination, that appellant's injury caused no aggravation or structural change to her lumbar spine. Dr. Huff noted that appellant's February 9, 2000 employment injury was a minimal insult to the lumbar spine. He stated that her pain complaints were consistent with her complaints prior to 1988. Dr. Huff opined that appellant's lumbar sprain had resolved based upon the objective evidence.

The Office provided appellant with a notice of proposed termination on August 19, 2006 and allowed her 30 days to submit evidence in response to the proposed termination.

By decision dated January 13, 2006, the Office terminated appellant's compensation and entitlement to medical benefits effective January 12, 2006 as she had no further employment-related condition or disability. It found that Dr. Huff's opinion constituted the weight of the medical evidence and established that her condition had resolved.

On February 1, 2006 appellant requested an oral hearing by an Office hearing representative, which was held on July 24, 2006.

In a July 7, 2006 report, Dr. Rommel G. Childress, a treating Board-certified orthopedic surgeon, noted that appellant had a lumbar fusion as a result of an employment-related back problem. He stated that her "lumbar fusion predisposes her to increase stresses mechanically above the site of fusion and increases her difficulty with related stress and arthritis developing." Dr. Childress advised that appellant's back problems had increased with age and the lumbar fusion. He opined that she continued to have residuals of her back injury and required medical treatment.

By decision dated September 8, 2006, the Office hearing representative affirmed the termination of appellant's compensation benefits.

On June 14, 2007 appellant requested reconsideration.

By decision dated August 9, 2008, the Office denied appellant's request for reconsideration of the merits as she had not submitted any evidence or argument with her request.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.² The employee shall exercise this right through a request to the district Office. The

¹ 5 U.S.C. § 8101 *et seq.*

² *Id.* at § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

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

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁵ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence 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.⁶

ANALYSIS

On June 14, 2007 appellant requested reconsideration. However, she did not submit any evidence or arguments with her request. Because appellant did not raise new arguments or present new evidence that the Office erroneously applied or interpreted a specific point of law; advance any relevant legal arguments not previously considered by the Office; or present any relevant and pertinent new evidence not previously considered by the Office, she is not entitled to further review of the merits of her claim under any of the criteria of section 10.606(b)(2).⁷

As appellant did not meet any of the regulatory requirements for review of the merits of his claim, the Board finds that the Office properly denied her June 14, 2007 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for merit review of her claim pursuant to section 8128.

³ 20 C.F.R. § 10.605.

⁴ *Id.* at § 10.606. *See Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ 20 C.F.R. § 10.607(a). *See Joseph R. Santos*, 57 ECAB 554 (2006).

⁶ *Id.* at § 10.608(b). *See Candace A. Karkoff*, 56 ECAB 622 (2005).

⁷ *Id.* at § 10.606(b)(2); *see W.C.*, 59 ECAB ____ (Docket No. 07-2257, issued March 5, 2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2007 is affirmed.

Issued: December 18, 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