

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

G.E., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Winchester, KY, Employer

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**Docket No. 08-1444
Issued: December 16, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 23, 2008 appellant filed a timely appeal from a February 25, 2008 decision of the Office of Workers' Compensation Programs denying his request for a merit review. There is no merit decision within one year of the filing of this appeal. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

This is appellant's second appeal before the Board. By decision issued March 26, 2003,¹ the Board affirmed November 14, 2001 and June 4, 2002 decisions of the Office denying appellant's October 26, 2001 request for an oral hearing as untimely. The Board also affirmed a September 9, 2002 decision finding that appellant's June 21, 2002 request for reconsideration

¹ Docket No. 03-365 (issued March 26, 2003).

was not timely filed and did not establish clear evidence of error. The law and the facts of the case as set forth in the Board's prior decision and order are hereby incorporated by reference.

In March 1 and 22, 2004 letters, appellant requested reconsideration. He alleged that Office errors and delays rendered his prior requests for reconsideration untimely. Appellant submitted reports from Dr. Harry Lockstadt, an attending Board-certified orthopedic surgeon, dated from December 1, 2000 to June 4, 2001. He also submitted July 2002 and January 2004 reports from Dr. W. Jeffrey Foxx, an attending family practitioner, and a September 2002 report from Dr. Rosa Riggs, an attending psychiatrist.²

By decision dated June 18, 2004, reissued January 31, 2007,³ the Office denied reconsideration on the grounds that appellant's request did not submit relevant evidence sufficient to warrant further merit review of his claim. It found that the evidence submitted did not contain relevant evidence or argument regarding the timeliness of his October 26, 2001 hearing request or June 2, 2002 request for reconsideration.

In March 9 and December 5, 2007 letters, appellant requested reconsideration.⁴ He asserted that the Office and the Board improperly refused to consider additional evidence.

By decision dated February 25, 2008, the Office denied reconsideration on the grounds that appellant's letters did not contain relevant evidence sufficient to warrant a merit review of the prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides 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) submit relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case

² Appellant submitted April 1999 billing forms regarding a transcutaneous electrical nerve stimulator unit. He asserted that the Office should have reimbursed him for the unit in April 2001. In a December 18, 2003 letter, the Office advised appellant that it had not authorized reimbursement.

³ The record indicates that appellant did not receive the June 8, 2004 decision. He filed an appeal with the Board on July 8, 2005, docketed as No. 05-1495. By order issued November 4, 2005, the Board remanded the case to the Office for reconstruction and proper assemblage of the record, to be followed by issuance of an appropriate decision. To protect appellant's appeal rights, the Office reissued the June 18, 2004 decision on January 31, 2007.

⁴ In the March 9, 2007 letter, appellant also requested an oral hearing. The Office sent appellant a copy of a June 4, 2002 letter reminding him that he was no longer entitled to an oral hearing.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

for a review on the merits.⁷ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

The Office denied appellant's request for a merit review by decision dated January 31, 2007. Appellant requested reconsideration by letters dated March 9 and December 5, 2007. He contended that the Board and the Office refused to consider additional evidence.

The underlying issue at the time of the last merit decision was the timeliness of both appellant's October 26, 2001 request for an oral hearing and June 21, 2002 request for reconsideration. To be relevant, the evidence submitted in support of the March 9, 2007 request for reconsideration must address that issue. In support of his request for reconsideration, appellant submitted March 9 and December 5, 2007 letters. These letters did not submit relevant evidence regarding the timeliness issue. Therefore, these documents are not sufficient to require the Office to reopen appellant's claim for consideration of the merits.⁹

Appellant has not established that the Office improperly refused to reopen his claim for a review of the merits under section 8128(a) of the Act. He 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 new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review.

⁷ *Id.* at § 10.608(b). See also *T.E.*, 59 ECAB ____ (Docket No. 07-2227, issued March 19, 2008).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

⁹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 25, 2008 is affirmed.

Issued: December 16, 2008
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