

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

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**J.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Richland, WA, Employer**

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**Docket No. 07-2207  
Issued: February 12, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 17, 2007 nonmerit decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its July 6, 2006 decision denying appellant's traumatic injury claim. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

**ISSUE**

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

**FACTUAL HISTORY**

On May 17, 2006 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a heat stroke on that day in the performance of duty. A May 17,

2006 duty status report, bearing an illegible signature, provided a diagnosis of acute renal failure and reflected that he had sustained a possible heat stroke while delivering mail. Appellant submitted a May 19, 2006 work excuse from Dr. Mona Sarrai, a treating physician, who stated that appellant had acute renal failure with dehydration, due to a heat stroke at work. The employing establishment challenged his claim in statements dated May 17, 18 and 24, 2006, contending that his condition resulted from consumption of potassium and bananas.

On May 31, 2006 the Office informed appellant that the information submitted was insufficient to establish his claim and advised him to submit, within 30 days, additional factual information and a narrative statement from a physician, with a diagnosis and rationalized opinion as to the cause of his diagnosed condition.

In response to the Office's request, appellant submitted a report from Dr. Michael Tenison, a treating physician, who diagnosed moderate acute renal failure, near syncope, hypotension and moderate dehydration. Dr. Tenison stated that appellant had an acute onset of weakness, dizziness, muscle cramps and diaphoresis, while walking his mail route that day. In a May 17, 2006 discharge summary, Dr. Sarrai diagnosed acute renal failure secondary to dehydration; dehydration, secondary to heat stroke; and increased liver enzymes, increased CPIC, secondary to acute renal failure and heat stroke. She stated that appellant had complained of feeling ill for the previous two days, with cramps in his legs, hands, feet and back. While at work on May 17, 2006, he became nauseous, sweaty, lightheaded and dizzy and vomited. Dr. Sarrai stated that she was entertaining the diagnosis of dehydration, even though appellant denied any decreased access to water. On June 19, 2006 Dr. Sarrai expressed her concern that the employing establishment was challenging his claim. She stated that appellant's heat stroke was not caused by his minor potassium consumption; that his blood pressure medicine did not cause his kidney failure; and that he did not have a urinary tract infection.

Appellant submitted reports of a chest x-ray and an ultrasound of the abdomen dated May 17, 2006; May 17, 2006 triage notes from Kadlec Medical Center; a May 16, 2006 newspaper clipping reflecting record-breaking temperatures; articles from WebMD and MayoClinic.com on heat-related illnesses; a May 17, 2006 statement from coworker Anthony Santos describing his observations of appellant in the hospital following the alleged incident; employing establishment time sheets for the period May 15 through 17, 2006; and a June 9, 2006 statement from Beverlee S. Jochen, a postal patron, who stated that, on May 17, 2006, she observed appellant to be pale and soaked with perspiration. In a statement dated June 19, 2006, he related his history of injury. Appellant indicated that, due to the record-breaking heat and humidity on May 15 and 16, 2006, he felt cramps in his legs and feet. After work on May 16, 2006 he went home and laid down for two hours. After resting, appellant drove his riding mower for 20 minutes. On May 17, 2006 he took potassium tablets and drank a lot of water before going to work. While walking his route, appellant developed cramps and blurred vision, and started sweating and vomiting. He stated that he had to call his supervisor to take him back to the employing establishment and, ultimately, to the emergency room.

By decision dated July 6, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that the claimed medical condition resulted from the accepted events. On June 26, 2007 he requested reconsideration of the Office's July 6, 2006 decision.

In an undated statement, appellant contended that the evidence established that he had suffered a heat stroke on May 17, 2006. In a statement dated July 25, 2006, he again described his symptoms of cramping and vomiting, stating that Dr. Sarrai had ruled out all causes for his condition except heat stroke. Appellant submitted a statement from an unidentified witness, Gayla Davis, who indicated that the temperature on May 17, 2006 was 99 degrees, with high humidity, and that she was aware of many people who were ill because of the heat.

Appellant submitted copies of numerous documents which were previously submitted and reviewed by the Office, including: Dr. Sarrai's May 19, 2006 work excuse; statements from the employing establishment dated May 17 and 18, 2006; employing establishment time sheets for the period May 15 through 17, 2006; appellant's June 19, 2006 statement; the May 17, 2006 x-ray report; the WebMD and MayoClinic.com articles on heat-related illnesses; the May 17, 2006 Form CA-1; the May 17, 2006 duty status report, bearing an illegible signature; and the June 9, 2006 statement from Ms. Jochen and Dr. Sarrai's May 17, 2006 discharge summary.

On August 17, 2007 the Office denied appellant's reconsideration request without reviewing the merits of the claim, finding that he had provided no new relevant evidence or legal argument to support his claim for injury.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Act,<sup>1</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>2</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, which sets forth arguments and contains evidence that:

“(i) Shows that the Office erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> *Id.*

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup>

### **ANALYSIS**

Appellant's June 26, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted a statement from Ms. Davis, who addressed the weather conditions on the date of the alleged incident. As Ms. Davis merely reiterated information contained in documents previously received and reviewed by the Office, her statement is cumulative and duplicative in nature.<sup>5</sup> Appellant also submitted copies of documents previously received and considered by the Office. As the documents are duplicative, they do not constitute new evidence not previously considered by the Office.<sup>6</sup> Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review under the third requirement under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>4</sup> See *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>5</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>6</sup> See *Susan A. Filkins*, 57 ECAB \_\_\_\_ (Docket No. 06-868, issued June 16, 2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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