

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

D.D., Appellant

and

**U.S. POSAL SERVICE, POST OFFICE,
Malden, MA, Employer**

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**Docket No. 07-2025
Issued: January 10, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 July 26, 2007 appellant filed a timely appeal of an April 30, 2007 decision of the Office of Workers' Compensation Programs denying merit review of his claim. Since more than one year has elapsed between the last merit decision on February 7, 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 of the claim pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

FACTUAL HISTORY

The Office accepted that appellant sustained a right hip strain in the performance of his duties as a letter carrier on April 19, 2004. On October 15, 2004 the employing establishment offered appellant a limited-duty assignment as a modified carrier at four hours per day. The

Office advised appellant by letter dated October 19, 2004, that it found the offered job to be suitable. Appellant submitted reports from attending physician, Dr. Kunwar Singh, an internist, and Joseph Abate, an orthopedic surgeon, which indicated that he was totally disabled. By letter dated November 19, 2004, the Office advised him that his reasons for refusing the position were unacceptable and that he had an additional 15 days to accept the offered job. In a decision dated December 9, 2004, it terminated appellant's compensation for wage loss effective November 27, 2004, on the grounds that he refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). The Office found that the weight of the medical evidence was represented by Dr. Richard Alemian, a second opinion physician.

An Office hearing representative, by decision dated February 7, 2006, affirmed the December 9, 2004 decision.

On February 13, 2006 the Office received form reports (CA-20), dated January 20 and February 3, 2006 indicating that appellant had been disabled since April 19, 2004.

In an undated letter received on February 5, 2007, appellant requested reconsideration of his claim. He stated that his physician indicated that he was totally disabled. Appellant argued that Dr. Alemian had only suggested that he try to return to work, but he was not sure appellant could perform the job. Appellant also argued, as he had before the hearing representative, that the Office terminated his compensation effective 8 days after the November 19, 2004 letter, not 15 days as stated in the letter.

Appellant submitted additional evidence in support of his reconsideration request. In a report dated December 13, 2004, Dr. Singh stated that appellant was having difficulty lifting, moving and standing. He stated that appellant had been referred for a functional capacity evaluation. In a report dated April 28, 2006, Dr. Richard Tyler, a neurologist, stated that appellant had a painful radiculopathy secondary to disc disease and he was unable to work at the present. The record also contains a February 28, 2006 magnetic resonance imaging scan of the lumbar spine. The remainder of the medical evidence submitted was previously of record. With respect to nonmedical evidence, appellant submitted a June 22, 2005 employing establishment letter providing notes of a predisciplinary interview for failure to accept a modified-job offer. He was asked if he accepted or refused the job offer and he answered he did not accept it or refuse the offer. A November 7, 2005 letter advised appellant that his work status was being changed from part-time flexible to full-time regular.

By decision dated April 30, 2007, the Office determined that the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration

¹ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

that sets forth arguments and contains evidence that either: “(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office].”² Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant submitted an application for reconsideration on February 5, 2007. He reiterated his belief that the position was not medically suitable and the Office had terminated his compensation effective only eight days after the November 19, 2004 letter. He did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered. The record indicated that appellant had previously argued that the effective date of the termination was less than 15 days after the November 19, 2004 Office letter.

With respect to the evidence submitted, most of this evidence was previously of record and was considered by the Office in its merit decisions. Of the evidence that had not been previously submitted, none is relevant and pertinent to the termination of wage-loss compensation pursuant to 5 U.S.C. § 8106(c)(2). The Forms CA-20 from Dr. Singh dated January 20 and February 3, 2006 do not discuss appellant’s ability to perform the offered position on October 15, 2004. They represent a continuation of prior form reports from Dr. Singh indicating total disability from April 19, 2004. The December 13, 2004 report also fails to discuss the offered position and provide relevant and pertinent evidence. In his April 28, 2006 report, Dr. Tyler referred to appellant’s inability to currently work, without discussing the relevant medical issue regarding his ability to perform the offered position at the time it was offered.

The Board finds that appellant did not submit relevant and pertinent evidence not previously considered by the Office. The June 22, 2005 letter regarding a predisciplinary interview and a November 7, 2005 letter regarding work status do not provide any new and relevant information regarding the termination of compensation under 5 U.S.C. § 8106(c)(2). Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly denied the application for reconsideration without reopening the claim for review of the merits.

CONCLUSION

Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly refused to reopen the claim for merit review.

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2007 is affirmed.

Issued: January 10, 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