United States Department of Labor
Employees' Compensation Appeals Board

H.G., Appellant	)	
	)	**Docket No. 07-2397**
and	)	**Issued: June 11, 2008**
	)	
U.S. POSTAL SERVICE, ORANGE POST OFFICE, Orange, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2007 appellant, through her attorney, filed a timely appeal of a December 15, 2006 merit decision of the Office of Workers' Compensation Programs, rescinding acceptance of her claim for a left foot injury and a June 27, 2007 nonmerit decision, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly rescinded its prior acceptance of appellant's claim for a contusion of the left foot; and (2) whether the Office properly denied her request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 19, 2005 appellant, then a 27-year-old part-time flexible letter carrier, filed a traumatic injury claim (Form CA-1). She alleged that at 1:30 p.m. on March 31, 2005 she sustained a foot contusion when she twisted her left foot in the employing establishment's

parking lot while pushing a cart. Appellant stated that there was a hole in the concrete. She did not stop work.

On appellant's claim form, Stanley F. Smith, a supervisor, stated that he first received notice of the alleged injury on April 19, 2005. He stated that appellant waived her right to medical attention on March 31, 2005 and she worked several days following the claimed injury. In an April 19, 2005 narrative statement, Mr. Smith contended that appellant alleged that she twisted her right ankle while pushing a loaded hamper to her truck at 12:30 p.m. on March 31, 2005. On April 19, 2005 appellant arrived at work wearing a fiberglass splint from her knee to her foot. As a result of his investigation, Mr. Smith determined that appellant claimed that she stepped from one uneven surface to another. At the time of the alleged injury, appellant claimed that she hurt her left foot and not her right foot. Based on his review of a surveillance videotape of the parking lot, Mr. Smith stated that appellant did not slip, trip or fall while loading or pushing a hamper to her truck. Appellant showed no signs of duress.

In a statement dated April 19, 2005, appellant related that she stepped on an uneven surface and twisted her foot while pushing a cart. She first received medical treatment on April 18, 2005 from Dr. Harvey L. Roter, a podiatrist. In an April 18, 2005 medical report, Dr. Roter stated that appellant complained of pain about the lateral aspect of her left foot. He placed her in a short leg walking cast for approximately three weeks. Dr. Roter requested that appellant be excused from work during this time period. In a May 13, 2005 report, he stated that appellant was being treated for a tear of the Peroneus Brevis tendon of the right foot. A magnetic resonance imaging (MRI) scan demonstrated increased signal and tendinosis. Dr. Roter opined that this condition was due to a lateral ankle plantar flexion foot injury. He noted that appellant could not bear weight on the foot and that she was wearing a removable short leg cast.

An undated disability certificate of Dr. Marco P. Holgado, a family practitioner, stated that appellant had been under his care from April 14 to 18, 2005. He diagnosed a foot contusion and released her to return to work on April 19, 2005.

By letter dated June 22, 2005, the Office addressed the additional factual evidence needed including an explanation as to why she did not report the alleged March 31, 2005 injury to her supervisor until April 19, 2005, a detailed description of how the alleged injury occurred, statements from witnesses to the alleged injury and the reason she delayed seeking medical treatment. The Office also addressed the additional medical evidence appellant needed to submit. It requested that the employing establishment provide any treatment notes regarding the alleged injury if appellant received any treatment from its medical facility.

In reports dated May 26 and June 27, 2005, Dr. Roter reviewed a history that on March 31, 2005 appellant fell in a pothole at work. He opined that she sustained a partial rupture of the left foot. Dr. Roter indicated with an affirmative mark that this condition was caused or aggravated by an employment activity.

On June 16, 2005 appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 31 through June 26, 2005. By letter dated July 13, 2005, the Office accepted her

claim for contusion of the foot/ankle and paid her appropriate compensation for the claimed period.

In statements dated April 19, 2005, appellant reiterated that at 1:30 p.m. on March 31, 2005 she was pushing her cart in the parking lot when she stepped on an uneven surface and twisted her foot.

In a June 21, 2005 memorandum, a postal inspector investigating appellant's claim stated that her April 19, 2005 statement of injury was not consistent with her March 31, 2005 statement of injury as she did not implicate an uneven surface as the cause of her accepted employment injury. Dr. Holgado's disability certificate indicated that appellant had been under his care since April 14, 2005 while she stated that she first received medical treatment on April 18, 2005. Also on June 21, 2005 the postal inspector stated that appellant worked 9 out of 13 days following the accepted employment injury before claiming total disability on or after April 19, 2005. Appellant also worked overtime on April 1, 2, 9 and 11, 2005. Time and attendance records indicated that she left work at approximately 1:21 p.m. on March 31, 2005 while she contended that her injury occurred at or about 1:30 p.m.

In a June 17, 2005 investigative interview, Postmaster Gary Thompson stated that he reviewed a videotape of the March 31, 2005 employment incident. He saw appellant in the parking lot at 12:40 p.m. and 12:47 p.m.

On April 21, 2005 the postal inspector interviewed Mr. Smith and Anthony Rodriguez, a supervisor. Mr. Smith stated that on March 31, 2005 appellant reported her injury to Robert Gary, a supervisor, who advised him about the injury between 12:15 p.m. and 12:30 p.m. Appellant informed Mr. Smith that she was not going to file a claim for the March 31, 2005 employment injury and that she did not require medical treatment. Mr. Smith recalled that appellant initially reported that the accepted employment injury occurred before 12:30 p.m. which was before she left to deliver mail on her route. He approved appellant's request for leave and noted that she did not require assistance as she left work. Appellant returned to work on or about April 2, 2005 and did not request a CA-1 form. She worked until approximately April 16, 2005. Mr. Smith stated that appellant did not mention the March 31, 2005 employment injury during this time period and had no difficulty walking. Appellant was out of work for three days beginning on or about April 16, 2005. On April 19, 2005 she advised Postmaster Thompson that she wanted to file a claim for the March 31, 2005 employment injury. Mr. Smith stated that appellant did not provide any medical documentation in support of her claim. He recalled that her CA-1 form indicated that the employment injury occurred at approximately 1:30 p.m. Mr. Smith stated that time and attendance records revealed that appellant clocked out from work at 1:21 p.m.

Mr. Rodriguez stated that on April 19, 2005 he walked to the parking lot with appellant and asked her to show him where the employment injury occurred. Appellant had difficulty identifying the location. Mr. Rodriguez stated that she walked around for quite some time before identifying a depression in the asphalt as the cause of her employment injury. He submitted photographs that he had taken of the accident site. Mr. Rodriguez stated that the videotape did not show appellant getting hurt. It also did not show her walking in the area where she claimed

to have sustained the employment injury. Mr. Rodriguez stated that appellant was seen walking without difficulty and pulling a hamper behind her.

In a March 31, 2005 routing slip, signed by appellant and Mr. Smith, on March 31, 2005, appellant stated that she twisted her foot while pushing her cart in the parking lot. She elected to not file a CA-1 form at that time.

In a July 7, 2005 memorandum, the postal inspector stated that he, Mr. Rodriguez and Postmaster Thompson inspected the accident site on June 16, 2005. Mr. Rodriguez described the irregularity in the asphalt and in his photographs. Mr. Smith and Postmaster Thompson positively identified appellant in the videotape loading her vehicle at approximately 12:40 p.m. and 12:47 p.m. without difficulty. Appellant was not seen twisting her left foot as alleged. There was no visual evidence of postinjury behavior by her such as, limping, favoring, walking slowly or stopping to inspect her injury.

The postal inspector's July 14, 2005 investigative report concluded that there was no evidence to support a finding that appellant sustained an injury on March 31, 2005 at the time or in the manner alleged. There was no videotape evidence that she sustained an injury as alleged. Appellant's inconsistent statements and activities following the March 31, 2005 incident did not support the alleged injury.

In reports dated July 1 and 26, 2005, Dr. Roter reiterated his prior history of the March 31, 2005 employment-related injury. In the July 26, 2005 report, he stated that April 8, 2005 was the date of injury. Dr. Roter opined that appellant sustained a peroneal tendon injury that was caused or aggravated by the March 31, 2005 employment injury.

On July 21, 2005 appellant stated that, while loading her truck, her left foot went into a hole in the employing establishment's parking lot causing her to twist her foot. She returned to the building to report the injury to Mr. Smith but he was not available. Appellant then reported the injury to Mr. Gary who paged Mr. Smith who examined her swollen foot and approved her request to go home to treat her foot. She stated that there were no witnesses to the incident. Appellant did not sustain any other injury between March 31 and April 19, 2005. She delayed seeking medical treatment because she tried home remedies to treat her foot. On March 14, 2005 appellant's pain and swelling were so great that she sought medical treatment from Dr. David Rizzo.[1] She stated that she did not have any prior injuries to her left foot.

By letter dated August 10, 2005, the Office advised appellant that her July 19, 2005 request to change her treating physician was denied because it appeared that her case had been accepted in error.

On August 18, 2005 the Office issued a notice of proposed rescission of the acceptance of appellant's claim for contusion of the foot/ankle. It stated that the surveillance videotape established that the March 31, 2005 incident did not occur as alleged. Appellant was given 30 days to submit additional evidence and argument if she disagreed with the proposed action.

[1] The Board notes that Dr. Rizzo's professional qualifications are not contained in the case record.

In an August 23, 2005 letter, appellant denied stating that she injured her right foot. She stated that, on April 19, 2005, she reported to work with an orthopedic boot on her left foot. Appellant contended that the postal inspector's investigation was completed without her input. If she had been given the opportunity, she would have pointed out the location of her employment injury on the videotape. Appellant stated that the injury occurred about 1:30 p.m. and that she was not sure about the exact time because two weeks had passed before anyone asked her about the injury on April 19, 2005. Mr. Rodriguez and Keith Hemmings, a shop steward, advised her to put 1:30 p.m. on her CA-1 form. Appellant stated that the investigative report did not mention the time lapse between the time she loaded her truck and the time she actually left the building. She stated that Mr. Smith did not want to complete the CA-1 form on March 31, 2005. Mr. Smith never asked her if she needed medical treatment or to complete a detailed statement of injury. Appellant contended that Mr. Smith never asked her to identify the location in the parking lot where the employment injury occurred. Mr. Smith did not take pictures or investigate the scene himself. After appellant, Mr. Rodriguez and Mr. Smith went to the parking lot so that she could identify the location of her injury Mr. Rodriguez expressed doubt about her statement of injury. Appellant advised him to review the videotape of the parking lot. After so doing, Mr. Rodriguez informed her that the location where she was injured was out of camera range. Appellant could not be seen getting hurt.

In an October 12, 2005 letter, appellant contended that the surveillance videotape was of poor quality. She had to watch it several times before recognizing herself. Although the videotape was viewed in play mode, appellant stated that it was in fast forward mode which made it difficult for anyone without firsthand knowledge to identify when the employment injury occurred. The videotape indicated that the time of injury was 12:53 p.m. and it appeared to show that the cart appellant was pulling tipped over because she was using it to catch her balance and to keep from falling to the ground when she twisted her foot. She took about two more steps before the pain hit her and she was able to put the cart onto her truck. Appellant sat down at the back of the truck out of camera view to take the pressure off her foot. She attempted to continue to perform her work duties at the front of the truck but, within one-half minute the pain was too great. Between the time, appellant came out of the building and was ready to return, a truck pulled between her and the building which blocked the camera's view of her limping back into the building. She did not know that her injury was extensive. If appellant had known, she would not have delayed in reporting it. She believed she sustained a simple twist of the foot and that she could nurse it back to health in a few days. Appellant contended that the videotape did not show her leaving for home shortly after 1:00 p.m. as it did not show her again after she went to the front of her truck at 12:54 p.m.

In an October 14, 2005 letter, appellant's attorney advised the Office that the quality of the tape was poor as the speed was five times faster than normal speed. The pictures were hazy and appeared to be mostly in black and white with small amounts of color.

By decision dated November 17, 2005, the Office rescinded acceptance of appellant's claim. It found that the postal inspector general's July 14, 2005 report was sufficient to cast doubt that appellant sustained an injury on March 31, 2005 at the time, place and in the manner alleged. In a December 2, 2005 letter, appellant, through her attorney, requested an oral hearing.

An undated witness statement of Kato James, a coworker, stated that he noticed appellant limping when returning from her route. Appellant stated that she hurt her foot. Mr. James suggested that appellant report the injury to management. He advised her that her foot would get worse if she stayed on it.

In an April 5, 2006 letter, Postmaster Thompson stated that the videotape clearly showed appellant leaving for the street. It was meant to be used in the postal inspector's video machines and not ones for home use. Mr. Thompson stated that the date and time of injury were verified by appellant's statements on her claim and made to Mr. Rodriguez. He noted that carts were not pulled rather they were pushed for safety reasons. The videotape did not show appellant's cart tip or her balance. Contrary to her contention that she did not sustain a prior work injury, Postmaster Thompson stated that she sustained injuries on April 15, 2002. He stated that all employees were trained to immediately report accidents. The management team checked the parking lot together with Mr. Hemmings and found no holes as reported by appellant.

In an undated narrative statement, Dominic Walton, a coworker and chief steward, related that he clearly remembered asking appellant on the day after she reported her injury why she was limping badly. She replied that she hurt her foot in the parking lot on the previous evening. Mr. Walton spoke to Mr. Smith on several occasions and Mr. Smith never mentioned that appellant was faking her injury. Mr. Smith was concerned about her receiving continuation of pay and work duties within her restrictions.

In an April 14, 2005 report, Dr. Rizzo stated that appellant experienced tenderness in the left foot.

By decision dated June 22, 2006, an Office hearing representative affirmed the November 17, 2005 rescission of appellant's claim.

In a September 6, 2006 letter, appellant, through counsel, requested reconsideration of the June 22, 2006 decision. In a July 18, 2006 letter, Mr. Hemmings stated that on April 19, 2005 appellant instantly identified the pothole in the parking lot where her injury occurred which was covered by a truck that she had moved. He noted that Mr. Rodriguez corrected appellant by stating that this was an uneven surface and not a pothole. Mr. Rodriguez gave appellant a claim form and told her to describe the accident site as an uneven surface and not a pothole. He also told her to write an estimated time of injury since she was unsure about the time. Appellant guessed the injury occurred around 1:30 p.m. Mr. Hemmings stated that Mr. Rodriguez told her that she should have reported the accident when it first occurred. Appellant responded that she reported it to Mr. Smith. Mr. Hemmings stated that Mr. Smith denied that Mr. Rodriguez advised him of her injury. Appellant quickly informed Mr. Smith about the form she completed which he signed on the same day. Mr. Hemmings related that Mr. Smith instantly retracted his statement, stating that he thought appellant told him about a right foot injury. Mr. Hemmings saw Mr. Smith provide appellant with assistance on her route between April 1 and 14, 2005 while her injury healed.

By decision dated December 15, 2006, the Office denied modification of the June 22, 2006 decision. The evidence submitted by appellant was insufficient to establish that the March 31, 2005 injury occurred as alleged.

In an April 9, 2007 letter, appellant, through counsel, requested reconsideration. A March 10, 2007 letter of Chelsea Randolph, a coworker, stated that she saw appellant coming to work everyday for about two weeks in April 2005 with very bad pain in her left foot. She and her coworkers tried to convince appellant to see a physician but she refused because she did not want to report an accident since it would look bad on her record. Appellant was soaking her foot everyday and hoped that it would get better. The next time Ms. Randolph saw her, she was wearing a boot on her foot. Appellant told her and Mr. Smith that her foot was not getting any better and that she did not want to see a physician but, she would do so if it did not heal quickly.

In a March 10, 2007 letter, Robert Pallino, a coworker, stated that appellant sustained the alleged injury because he talked to her before the injury and she was fine. Appellant was not limping or complaining at all. On the next day, following the alleged injury, Mr. Pallino asked appellant why she was limping. She stated that she hurt her foot in the parking lot the other day and that she was waiting for it to heal. Soaking of the foot was not working and it was getting worse. On at least one occasion, Mr. Pallino overheard a conversation between Mr. Smith and appellant concerning the type of assistance that she would be given to compensate her injury.

In a June 27, 2007 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was of an immaterial nature and, thus, insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.[2] The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.[3] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[4]

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.[5] This holds true where, as here, the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.[6]

[2] 5 U.S.C. § 8128.

[3] *John W. Graves*, 52 ECAB 160, 161 (2000).

[4] *See* 20 C.F.R. § 10.610.

[5] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[6] *John W. Graves*, *supra* note 3.

ANALYSIS -- ISSUE 1

The Office rescinded acceptance of the claim because of inconsistencies in the record that called into question whether appellant injured her left foot on March 31, 2005. It is the employee's burden to establish that his or her injury occurred at the time, place and in the manner alleged.[7] An injury does not have to be confirmed by an eyewitness to establish that it occurred in the performance of duty.[8] An employee's statement regarding the circumstances surrounding an injury is of great probative value and will be accepted unless refuted by persuasive evidence.[9] The employee's statement must be consistent with the surrounding facts and circumstances as well as the employee's subsequent course of action.[10] An employee has not met his or her burden of proof where there are inconsistencies in the record that cast serious doubt on the validity of the claim.[11]

The timing of appellant's claimed left foot injury is uncertain. Appellant contended that she sustained the injury at 1:30 p.m. in the employing establishment's parking lot on March 31, 2005. She referenced this time in her April 19, 2005 claim and narrative statements and an August 23, 2005 statement. Appellant later stated that she did not really know what time the left foot injury occurred. She was advised by Mr. Rodriguez and Mr. Hemmings to put 1:30 p.m. as the time of injury on her claim. Mr. Hemmings stated that appellant did not remember the exact time of the alleged injury. He related that Mr. Rodriguez advised her to state that the injury occurred at 1:30 p.m. Although appellant signed a routing slip on March 31, 2005 stating that she twisted her foot while pushing her cart in the parking lot, she advised Mr. Smith that she had elected to not file a CA-1 form at that time. She did not file her claim for the alleged injury until 19 days later, on April 19, 2005. Appellant also delayed in seeking medical treatment. She claimed that she first sought medical treatment on April 18, 2005 from Dr. Roter. However, appellant later stated that she was treated by Dr. Rizzo on March 14, 2005. The Board notes that this treatment predates the alleged injury. The record indicates that Dr. Rizzo actually evaluated appellant on April 14, 2005. The statements of Mr. Walton and Mr. James indicated that they saw appellant limping after the alleged injury. However, neither Mr. Walton nor Mr. James stated that they actually witnessed appellant hurt her left foot in the parking lot on March 31, 2005.

The postal inspector's July 14, 2005 investigative report concluded that there was no evidence to support a finding that appellant sustained an injury on March 31, 2005 at the time, place and in the manner alleged based on a surveillance videotape and photographs of the parking lot, the interviews of Postmaster Thompson, Mr. Smith and Mr. Rodriguez, time and attendance records and appellant's inconsistent statements and behavior following the alleged injury. The videotape showed appellant loading her truck prior to 1:30 p.m. There was no visual

[7] *Delphyne L. Glover*, 51 ECAB 146, 147-48 (1999).

[8] *Id.*

[9] *Michelle Kunzwiler*, 51 ECAB 334, 335 (2000).

[10] *Id.*

[11] *Id.*

evidence of postinjury behavior by appellant such as, limping, favoring, walking slowly or stopping to inspect her injury.

Postmaster Thompson stated that the videotape showed appellant in the parking lot at 12:40 p.m. and 12:47 p.m. He related that carts were pushed and not pulled for safety reasons. Mr. Smith stated that the videotape did not show appellant slip, trip or fall while loading or pushing a hamper to her truck. He also stated that she did not show any signs of duress. Mr. Smith stated that Mr. Gary advised him about the alleged injury between 12:15 p.m. and 12:30 p.m. on March 31, 2005. He stated that appellant initially claimed an injury to her right foot. Mr. Smith approved her leave on March 31, 2005 and noted that she did not require any assistance leaving work. He indicated that time and attendance records showed that appellant left work at 1:21 p.m. Appellant returned to work on April 2, 2005 and worked until April 16, 2005. The postal inspector determined that she worked 9 out of 13 days following the alleged injury before claiming total disability on or after April 19, 2005. Appellant also worked overtime on April 1, 2, 9 and 11, 2005. Mr. Rodriguez stated that the videotape did not show that appellant sustained an injury in the area she claimed. He stated that she was seen walking without difficulty and pulling a hamper behind her.

Appellant's misstatements regarding when and how her injury arose cast serious doubt on her claim to have injured her left foot in the performance of duty on March 31, 2005. In the November 17, 2005, June 22 and December 15, 2006 decisions, the Office clearly explained its reason for rescinding acceptance of appellant's claim. The Board finds that the Office met its burden to rescind acceptance of appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[12] the Office's regulation provide 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) constitute relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In an April 9, 2007 letter, appellant, through counsel, disagreed with the Office's December 15, 2006 decision, denying modification of the November 17, 2005 rescission of

[12] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(1)-(2).

[14] *Id.* at § 10.607(a).

acceptance of appellant's claim because the factual evidence of record did not establish that she sustained a claimed left foot injury as alleged, in the employing establishment's parking lot on March 31, 2005. The relevant issue in the case is the factual question of whether appellant has established that she sustained an injury in the parking lot on March 31, 2005.

Appellant submitted letters from her coworkers, Ms. Randolph and Mr. Pallino which stated that they saw appellant experiencing pain in her left foot and limping following the March 31, 2005 incident. Although this evidence is new, it does not address the issue of whether appellant's injury occurred in the employing establishment's parking lot on March 31, 2005. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[15] Neither Ms. Randolph nor Mr. Pallino stated that they witnessed appellant hurt her left foot in the parking lot on March 31, 2005. Thus, the Board finds that the letters of Ms. Randolph and Mr. Pallino are not relevant and thus, insufficient to warrant reopening appellant's claim for further merit review.

The evidence submitted by 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 constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.[16]

CONCLUSION

The Board finds that the Office properly rescinded acceptance of appellant's claim for a contusion of the left foot. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

[15] *See Patricia G. Aiken*, 57 ECAB 441 (2006).

[16] *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2007 and December 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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