

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Westlake, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-427
Issued: June 3, 2008**

Appearances:
Richard F. Bilski, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 23, 2007 appellant filed a timely appeal of an August 23, 2007 decision wherein the Office of Workers' Compensation Programs denied her request for reconsideration. As the last merit decision in this case was issued on January 6, 2006, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board does not have jurisdiction to review the merits of the case. The Board will review the nonmerits of the case.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 15, 2006 appellant, then a 46-year-old city carrier, filed a traumatic injury claim alleging that, on that date, while delivering mail to a box, she felt a sharp pain across her lower back and down her right leg. By letter dated May 22, 2006, the employing establishment controverted the claim, alleging that she had not established fact of injury. The employing

establishment attached a statement from appellant's supervisor controverting appellant's statement with regard to how the injury occurred. Appellant also submitted a duty status report dated May 16, 2005 and medical records from St. John West Shore Hospital dated May 15, 2006.

By decision dated July 6, 2006, the Office denied appellant's claim because the medical evidence did not establish that the claimed medical condition was causally related to the established work event.

In a letter dated June 28, 2006, but not received until July 11, 2006, after the Office's decision, appellant gave a complete description as to how her injury occurred and she discussed the aftermath of the injury. She also made comments as to why the injury did not occur in a different manner and noted that she had filed grievances against certain persons at the employing establishment who alleged that she made false statements as to how she injured herself. Appellant also submitted notes and duty status reports by her treating physician, Dr. Manuel A. Martinez. In a note dated May 16, 2006, Dr. Martinez indicated that appellant was seen complaining of difficulty with her back. Appellant informed him that when she lifted something at work she noted pain in the back and radiating down to the right lower extremity. Dr. Martinez noted no acute fracture or dislocation. In a note following a June 15, 2006 office visit, he noted that the magnetic resonance imaging scan showed some degenerative changes and stenosis in the lumbosacral spine with some disc protrusion at the L4-5 level. In a duty status report dated June 15, 2006, Dr. Martinez indicated that appellant had limitations prohibiting lifting over 20 pounds and restricting kneeling, bending, stooping, twisting, pushing and pulling to one to two hours a day and fine manipulation and reaching above shoulder to two hours a day.

On July 10, 2007 appellant requested reconsideration. In support, she submitted a letter by her union representative wherein the union representative argued that appellant's claim was denied because it was challenged by false accusations by appellant's supervisor and that nothing in appellant's medical chart indicated that the injury occurred in a different manner than that which she claimed. Appellant also submitted the supervisor's statement, a report with regard to her grievance, statements by other employees, an offer of limited-duty work and leave requests.

By letter dated August 9, 2007, appellant's union representative submitted new medical evidence. Specifically, he submitted additional progress notes from Dr. Martinez dated July 12 through September 19, 2006 wherein he noted that appellant's back was getting better and that her work activities were increasing.

By decision dated August 23, 2007, the Office denied appellant's request for reconsideration without review of the merits of the case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's regulations provide that the application for reconsideration 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 legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹

A timely request for reconsideration may be granted if the Office determines that the employee has represented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.²

ANALYSIS

In the instant case, appellant did not meet any of the criteria for requiring the Office to reopen her case for merit review. She did not argue that the Office erroneously applied or interpreted a specific point of law, nor did she raise legal arguments not previously considered. Furthermore, appellant did not submit any relevant and pertinent new evidence. Her claim was denied because the medical evidence failed to establish that she sustained an injury as a result of the accepted work factors. Accordingly, the nonmedical evidence in this case is not relevant to the reason that her claim was denied. Furthermore, the medical evidence submitted on reconsideration, specifically the medical reports and items by Dr. Martinez, do not establish that appellant sustained a medical condition as a result of established work events, as Dr. Martinez does not address whether appellant's complaints were causally related to the May 15, 2006 employment incident. As he does not address causal relationship his reports are irrelevant to the threshold issue and insufficient to establish causal relationship.

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

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ 20 C.F.R. §10.606.

² 5 U.S.C. §§ 8101-8193, § 8128(a). The Board has found that the imposition of the one-year limitation does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act. See *Adell Allen (Melvin L. Allen)*, 55 ECAB 390 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 23, 2007 is affirmed.

Issued: June 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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