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C.D., Appellant	)	
	)	
and	)	Docket No. 08-1280
	)	Issued: October 10, 2008
U.S. POSTAL SERVICE, TRUCK TERMINAL	)	
ANNEX, Philadelphia, PA, Employer	)	
	)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On April 1, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 21, 2008 which denied her request for merit review. Because more than one year has elapsed between the last merit decision dated November 2, 2006¹ and the filing of this appeal on April 1, 2008, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

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

¹ The Board reviewed this decision of the Office on October 22, 2007. Docket No. 07-1429 (issued October 22, 2007). The Board's regulations provide that decisions of the Board are final after 30 days and not subject to review. 20 C.F.R. § 501.6(c) and (d).

FACTUAL HISTORY

This is the third appeal in this case. On September 2, 1992 appellant, then a 33-year-old casual mail handler, sustained injury in her side while working on a truck on August 27, 1992. The Office initially denied her claim on October 28, 1992 and January 11, 2004. Appellant requested review by the Board. By decision dated July 8, 1996, the Board set aside the Office's decisions and remanded the case for additional development of the medical evidence regarding whether she had sustained an umbilical hernia on August 27, 1992.² On August 21, 1996 the Office accepted appellant's claim for aggravation of umbilical hernia with repair. Appellant then requested wage-loss compensation from February 2, 1993 through December 31, 1995 and January 1 through March 18, 1996. The Office denied this claim by decision dated November 2, 2006. Appellant requested reconsideration on March 5, 2007 and the Office declined to reopen her claim for consideration of the merits on April 17, 2007. By decision dated October 22, 2007, the Board affirmed the November 2, 2006 and April 17, 2007 decisions of the Office.³

In a letter dated January 28, 2008, appellant requested that her case be reopened. By decision dated February 21, 2008, the Office declined to reopen her claim for reconsideration of the merits on the grounds that she failed to submit any evidence or argument in support of her request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that the evidence or argument submitted by 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.⁵ 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 on the merits.⁶

ANALYSIS

Appellant requested reconsideration of the merits of her claim on January 28, 2008. This request, however, did not contain any argument and was not accompanied by any evidence. As appellant's request for reconsideration did not meet the requirements of the Office's regulations

² Docket No. 94-1738 (issued July 8, 1996).

³ Docket No. 07-1429 (issued October 22, 2007).

⁴ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

to obtain a merit review, the Office properly declined to reopen her claim for consideration of the merits on February 21, 2008.

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's claim for consideration of the merits on February 21, 2008.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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