

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

Y.S., Appellant	)	
	)	
and	)	<b>Docket No. 09-1320</b>
	)	<b>Issued: December 17, 2009</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 22, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 16, 2009, which denied her request for merit review. Because more than one year elapsed between the Office's last merit decision dated February 16, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

**ISSUE**

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

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<sup>1</sup> The Board issued a merit decision on July 1, 2008 in Docket No. 08-467. However, this decision was final as to the subject matter appealed and is not subject to review. 20 C.F.R. § 501.6. In a letter dated October 9, 2008, the Clerk of the Board informed appellant that her petition for reconsideration of the Board's July 1, 2008 decision was not timely.

## **FACTUAL HISTORY**

This case has previously been before the Board. On August 1, 2006 appellant then a 37-year-old postal mail handler, filed an occupational disease claim alleging depression, anxiety, panic attacks and persistent nervousness due to actions of Betty Jones, her supervisor. The Branch of Hearings and Review denied her claim by decision dated February 16, 2007. Appellant requested reconsideration on July 13, 2007. By decision dated August 7, 2007, the Office denied her request for reconsideration of the merits. Appellant appealed this decision to the Board. In a July 1, 2008 decision,<sup>2</sup> the Board affirmed the Office's decisions. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On December 26, 2008 appellant requested reconsideration before the Office. She submitted a November 28, 2006 letter from the employing establishment that found she was absent without leave beginning September 18, 2006. Appellant submitted medical evidence dated July 19, 2006 to January 24, 2007. In a letter dated December 19, 2006, the employing establishment proposed to remove her from service due to her continued absence without leave. On January 20, 2007 the employing establishment removed appellant from duty effective February 23, 2007. Following appellant's grievance of this matter, on January 31, 2008 an arbiter dismissed her grievance as untimely. She also resubmitted a report dated September 15, 2006 from a Dr. Brendon J. Bereford together with a March 13, 2007 from Dr. Bereford.

By decision dated January 16, 2009, the Office denied appellant's request for reconsideration of the merits finding that she failed to submit relevant and pertinent new evidence.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

## **ANALYSIS**

Appellant requested reconsideration on December 26, 2008. In support of her reconsideration request, she submitted documentation regarding her removal from the employing

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<sup>2</sup> Docket No. 08-467 (issued July 1, 2008).

<sup>3</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

establishment for absence without leave beginning in November 2006. This documentation is not relevant to the factors previously alleged by appellant as causing or contributing to her August 1, 2006 emotional condition.

Appellant also submitted medical evidence regarding her emotional condition. As she has not established any compensable employment factors, the medical evidence of record is not relevant to the underlying issue in her case.<sup>6</sup> Appellant must first establish a compensable employment factor before the medical evidence is relevant. The Office properly denied her request for further review of the merits.

**CONCLUSION**

The Board finds that appellant has failed to submit relevant and pertinent new evidence with her reconsideration request.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).