United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 08-1791**
	)	**Issued: January 27, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 13, 2008 appellant timely appealed the nonmerit decision of the Office of Workers' Compensation Programs dated January 22, 2008 denying his request for reconsideration. As the most recent merit decision of record is January 19, 2007, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without further merit review.

FACTUAL HISTORY

On February 10, 2006 appellant, then a 59-year-old letter carrier, filed a claim alleging that on January 30, 2006 he sustained lower back pain in the course of his employment. He alleged that, after reaching down to grab mail from a tub, he stood up, resting mail in his left arm, when pain ran across the lower part of his back.

Appellant alleged that, following the January 30, 2006 work incident, while at home on Sunday, February 5, 2006, he sat down in a chair, tying his shoes, and felt a very strong pain across the whole area of his lower back. He thereafter missed intermittent days from work. Appellant alleged that he returned to full-time light duty on February 15, 2006.

In support of his claim, appellant also submitted medical reports from Dr. Sharie E. Diamond, Board-certified in internal medicine, and Dr. Barry D. Fass, Board-certified in physical medicine and rehabilitation. He also submitted reports from a chiropractor, Louis Beato.

By decision dated March 31, 2006, the Office denied the claim because the evidence submitted was insufficient to establish that he sustained an injury as a result of the alleged factor of employment. It noted that it had not reviewed the medical evidence of record because "we cannot determine where the injury occurred."

By letter dated April 22, 2006, appellant requested an oral hearing before the Branch of Hearings and Review.

Appellant continued to submit progress reports from Dr. Fass dated from March 22 through July 2006, as well as a magnetic resonance imaging (MRI) scan report dated May 3, 2006 from Dr. Helen Sax, Board-certified in diagnostic radiology.

By decision dated January 19, 2007, the Branch of Hearings and Review affirmed the Office decision dated March 31, 2006. The hearing representative found that the incident occurred as alleged, but that appellant had not established that his diagnosed medical conditions were caused by the accepted incident.

By letter dated December 20, 2007, appellant requested reconsideration of his claim. He stated that, from the time of his injury, he continues to experience pain in his lower back, mainly during work hours on a daily or weekly basis. Appellant did not submit any further evidence in support of his claim.

By letter decision dated January 22, 2008, the Office denied appellant's request for reconsideration because he did not explain the basis of his request for reconsideration. Moreover, it rejected appellant's request for reconsideration because his request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in

using this discretion.[1] The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

> (i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> (ii) Advances a relevant legal argument not previously considered by [the Office]; or
>
> (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].[2]

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[4]

ANALYSIS

The Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review because appellant failed to meet any of the three regulatory criteria justifying merit review.

The Board notes that appellant did not assert that the Office misapplied or misinterpreted a point of law or advance a new and relevant legal argument. Therefore appellant has not met either of the first two regulatory criteria justifying a merit review of her claim.

Furthermore, with his application for reconsideration, appellant submitted no evidence other than his own statement that, since the date of his injury, January 30, 2006, he continued to experience pain in his low back area on a daily or weekly basis; was doing home exercises; and, planned to seek the care of an orthopedic medical doctor. However, this statement does not constitute new and relevant evidence requiring the Office to reopen his claim for merit review.[5] The hearing representative found that, while appellant had established that he lifted the tub of mail, as alleged, the medical evidence was insufficient to establish that he sustained an injury as

[1] 20 C.F.R. § 10.606(b)(2).

[2] *Id.*

[3] 20 C.F.R. § 10.608(b).

[4] *Annette Louise*, 54 ECAB 783 (2003).

[5] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

a result of this incident. Appellant's claim was denied for lack of rationalized medical evidence. The Board has held that appellant's own assessments of his medical condition do not constitute sufficiently substantial evidence to require a merit review.[6] To establish his claim, appellant was required to submit new and relevant medical evidence.

The Board finds that appellant did not meet any of the three criteria warranting further merit review. Accordingly, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without conducting further merit review because appellant failed to meet any of the three regulatory criteria justifying a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2008 is affirmed.

Issued: January 27, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[6] *Edgar G. Maiscott,* 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).