

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 09-302
Issued: July 28, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On November 12, 2008 appellant filed a timely appeal of the September 9, 2008 decision of the Office of Workers' Compensation Programs denying his request for reconsideration without a merit review. Because more than one year has elapsed from the last merit decision dated July 25, 2007 to the filing of this appeal, the Board lacks jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without further review under section 8128(a).

FACTUAL HISTORY

On October 3, 2006 appellant, then a 62-year-old clerk, filed an occupational disease claim alleging that he developed shoulder and right arm pain from casing mail. He first realized his condition was caused by his employment on September 11, 2006. Appellant did not stop work. The employing establishment controverted the claim.

Appellant submitted a September 13, 2006 report from Dr. Michael Spezia, an osteopath specializing in family medicine, who noted that appellant started having difficulty with mobility while at work and after doing repetitive motion within the neck, low back and shoulder areas. Dr. Spezia diagnosed cervical somatic dysfunction, right shoulder sprain and contusion, cervical myositis, cervical sprain, cervicothoracic myositis and right shoulder tenosynovitis. He opined that appellant appeared to have aggravated his right shoulder and neck area during his employment with repetitive motion to the right shoulder and neck area causing aggravation of pain and discomfort within that area.

On December 22, 2006 the Office advised appellant of the factual and medical evidence necessary to establish his claim. It allowed him 30 days to submit additional information.

By decision dated July 25, 2007, the Office denied appellant's claim for compensation finding that the medical evidence did not establish that the claimed right upper extremity condition was related to the established work-related events.

On June 27, 2008 appellant requested reconsideration and described the nature of work he performed. He noted that his position required reaching and stretching while casing mail for eight hours a day. Appellant also noted that he engaged in little to no activities outside of work.

In a June 16, 2008 report, Dr. Spezia indicated that appellant sustained a work-related injury to his right shoulder with decreased mobility, increased pain and an inability to complete range of motion without discomfort. He diagnosed status post right arm rotator cuff surgery performed on April 16, 2008. Dr. Spezia noted that appellant had a torn right rotator cuff caused by chronic overuse of adduction, abduction and internal and external rotation of his right shoulder during his employment.

By decision dated September 9, 2008, the Office denied appellant's request for reconsideration without a merit review. It found that the medical evidence submitted on reconsideration was cumulative and substantially similar to the evidence already of record.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), 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.¹ Section 10.608(b) of Office regulations provides that when an application for reconsideration 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.²

¹ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

² 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

ANALYSIS

Appellant's reconsideration request contained a statement describing the nature of his position, which required reaching and stretching. However, the underlying issue is medical in nature; whether the medical evidence establishes that his right upper extremity condition is causally related to employment factors. The Office did not dispute the duties that appellant identified as the cause of his claimed condition. Therefore, appellant did not demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first two requirements.

Regarding the third basis for reopening a claim for merit review, submission of relevant and pertinent new evidence, appellant submitted Dr. Spezia's June 16, 2008 report. Dr. Spezia opined that appellant sustained a work-related injury due to chronic overuse of his right shoulder. While new, this report is not pertinent and relevant as it is cumulative in nature. This report is similar to the opinion on causal relationship provided in the physician's September 13, 2006 report. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.³ No other medical evidence was submitted with appellant's request for reconsideration.

Therefore, the Office properly denied appellant's request for a review on the merits as he failed to meet any of the three requirements, noted above, for reopening a claim for merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without further merit review.

³ *Roger W. Robinson*, 54 ECAB 846 (2003).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 9, 2008 is affirmed.

Issued: July 28, 2009
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