United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 08-2444**
	)	**Issued: June 12, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Ricardo A. Byron, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 12, 2008 appellant filed a timely appeal of the June 13, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying merit review of its March 15, 2007 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this appeal.[1]

ISSUE

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

[1] Because more than one year had elapsed between the date of the Office's most recent merit decision, dated March 15, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim. 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

On August 25, 2005 appellant filed a traumatic injury claim alleging that her right foot started to hurt while she was delivering mail on her route on June 9, 2005. The employing establishment controverted the claim, stating that she did not mention her alleged injury until she filed her claim, that she failed to file her claim within 30 days of the alleged incident; and a "hurt foot" did not constitute a traumatic injury.

Appellant submitted reports of magnetic resonance imaging (MRI) scans and x-rays, as well as medical notes and reports from June 9 through October 25, 2005. A June 9, 2005 emergency room report, bearing an illegible signature, reflected that appellant had been "reinjured" and was experiencing right foot and ankle pain. On June 10 and 14, 2005 Ivone Chrzastowska, a physicians' assistant, diagnosed right ankle and knee sprain. On June 20, 2005 Dr. Cynthia Harrell, a treating physician, stated that appellant felt a pull in her left ankle while walking on April 28, 2005. In reports dated August 13 and September 21, 2005, Dr. Richard Cantilli, a treating physician, diagnosed "ankle lateral malleolus (closed); tend[i]nitis/bursitis ankle/foot," noting the date of injury as June 9, 2005. The record contains reports dated June 15, 2005 of an x-ray of the right ankle and of an MRI scan of the right lower extremity.

By decision dated October 24, 2005, the Office denied appellant's claim, finding that she had not sustained a traumatic injury as defined by the Act. It found that inconsistencies in the evidence, as well as the delay in reporting the incident, cast serious doubt on the validity of appellant's claim.

On November 10, 2005 appellant requested reconsideration. By decision dated January 4, 2006, the Office denied modification of its previous decision.[2]

On December 12, 2006 appellant, through her representative, requested reconsideration. The representative indicated that, while delivering mail on June 9, 2005, appellant hit her right foot on a spike which was protruding from a concrete surface. He alleged that appellant reported the incident to her supervisor after returning to the employing establishment. The representative contended that, as the employing establishment had not submitted any credible evidence controverting the claim, appellant's statement had great probative value and was sufficient to establish the factual component of her claim. He contended that the medical evidence was sufficient to establish a causal relationship between the June 9, 2005 incident and appellant's claimed condition.

In an October 15, 2006 statement, appellant reported that she hit her right foot on a spike, which was protruding from the ground, on June 9, 2005. She indicated that she informed her supervisor of the incident, and was told to go to the emergency room, where her foot was placed in a cast. Appellant stated that the delay in filing was due to confusion over whether she should file a notice of recurrence or a traumatic injury claim form.

[2] The Office noted that appellant had an open claim for an alleged April 25, 2005 left foot injury. (File No. xxxxxx917).

By decision dated March 15, 2007, the Office denied modification of its previous decisions. It found that appellant had failed to establish the fact of injury.

On March 12, 2008 appellant, through her representative, filed another request for reconsideration. The representative stated that appellant reported to her supervisor that she injured her right foot on the date in question, that the employing establishment had not provided any evidence controverting her claim, and that the medical evidence and appellant's statements were consistent and established that she struck her foot on a spike as alleged.

By decision dated June 13, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review. It found that appellant had failed to submit any new or relevant evidence and had not advanced any new legal contentions that were not previously considered.

LEGAL PRECEDENT

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[3] This section provides that the application for reconsideration must be submitted in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4]

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

ANALYSIS

Appellant has failed to present evidence and/or argument in support of her request for reconsideration that meets at least one of the standards described in section 10.606(b)(2).[6] Therefore, the Board finds that the Office properly denied her request for merit review.

In his March 12, 2008 letter requesting reconsideration, appellant's representative stated that appellant reported to her supervisor that she injured her right foot on the date in question, that the employing establishment had not provided any evidence controverting her claim and that the medical evidence and appellant's statements were consistent and established that she struck her foot on a spike as alleged. Although the representative contended that the claims examiner

[3] 20 C.F.R. § 10.608(a).

[4] *Id.* at § (b)(1) and (2).

[5] *Id.* at § 10.608(b).

[6] *Supra* note 3.

erred, he neither alleged nor demonstrated 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 it. The representative merely reiterated contentions previously made in his December 12, 2006 request for reconsideration. Therefore, his arguments are cumulative and duplicative in nature.[7] Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant did not submit any additional medical evidence in support of her March 12, 2008 request for reconsideration. Therefore, she did not meet the third requirement listed in section 10.606(b) by submitting relevant and pertinent new evidence not previously considered by the Office.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 12, 2008 request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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