

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

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**F.C., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Kansas City, MO, Employer**

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**Docket No. 08-1760  
Issued: March 6, 2009**

*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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 9, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated February 25, 2008 denying her request for merit review. The Office's last merit decision of record was a March 9, 2006 decision denying appellant's claim for wage-loss compensation. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**ISSUE**

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

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

This is the third appeal before the Board. On October 29, 2002 the Board affirmed the denial of appellant's claim for a recurrence of disability.<sup>2</sup> The Board found the evidence insufficient to support her claimed period of disability. In a June 12, 2007 decision, the Board<sup>3</sup> affirmed the Office decisions of March 9 and November 14, 2006. The Office found that appellant failed to establish that she was disabled for work or entitled to wage-loss compensation for the period March 19, 2002 through August 30, 2004. It also denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a). The facts and the history of the case are set forth in the Board's prior decisions and incorporated by reference.<sup>4</sup>

In a letter dated January 18, 2008, appellant requested reconsideration. The evidence relevant to her reconsideration request includes: previously submitted medical reports and factual evidence from 2002 to 2005; physical therapy reports for the period June 14 to August 16, 2007; reports dated June 26 and July 26, 2007 by Dr. Mirza Baig, an examining physician, regarding appellant's left shoulder condition; an August 27, 2007 report by Dr. Tariq Niazi, an examining physician; and a September 7, 2007 magnetic resonance imaging (MRI) scan of the left shoulder.

On June 26, 2007 Dr. Baig provided findings from a physical examination and left shoulder subacromial impingement. She noted that appellant had markedly restricted range of motion in her left shoulder. Dr. Baig, in her July 26, 2007 report, diagnosed left shoulder adhesive capsulitis and provided findings from a physical examination. She noted that appellant had restricted left shoulder range of motion.

On August 26, 2007 Dr. Niazi reported physical examination findings and diagnosed left shoulder adhesive capsulitis. He noted that appellant continued to have restricted range of motion in her left shoulder.

In an February 25, 2008 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>2</sup> Docket No. 03-713 (issued October 29, 2002).

<sup>3</sup> Docket No. 07-395 (issued June 12, 2007).

<sup>4</sup> On March 19, 2002 appellant, then a 74-year-old clerk, aggravated a preexisting back subluxation while carrying empty buckets and lifting boxes. The Office accepted the claim for a thoracic subluxation, left shoulder adhesive capsulitis, left shoulder osteoarthritis and left shoulder enthesopathy. Appellant stopped work on March 21, 2002. The employing establishment terminated her employment effective June 14, 2002 because she was absent without leave (AWOL) following the working injury for an extended period of time. Appellant filed a recurrence claim on July 24, 2002 and a claim for wage-loss compensation (Form CA-7) for the period March 20 to June 19, 2002.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act<sup>5</sup> provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>6</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.<sup>7</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be 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; (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.<sup>8</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>9</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>10</sup>

## ANALYSIS

In connection with appellant's January 18, 2008 reconsideration request, she submitted reports dated June 26 and July 26, 2007 by Dr. Baig, an examining physician; an August 27, 2007 report by Dr. Niazi; and a September 7, 2007 MRI scan of the left shoulder. These reports all diagnosed a left shoulder condition.

However, the submission of these reports does not require reopening of appellant's claim for merit review because they are not relevant to the main issues of the present case, which is whether she was totally disabled for the period March 19, 2002 through August 30, 2004 due to her accepted employment injuries.<sup>11</sup> Neither Dr. Baig nor Dr. Niazi provided any opinion that

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<sup>5</sup> 5 U.S.C. § 8101 *et seq.*

<sup>6</sup> *Id.* at § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>7</sup> 20 C.F.R. § 10.605.

<sup>8</sup> *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>9</sup> *Id.* at § 10.607(a). See *Joseph R. Santos*, 57 ECAB 554 (2006).

<sup>10</sup> 20 C.F.R. § 10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

<sup>11</sup> *M.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-1189, issued September 20, 2007).

appellant sustained a recurrence of total disability on or after March 19, 2002 due to her accepted employment injuries. Appellant also resubmitted medical and factual evidence from 2002 to 2005. The Board has held that evidence that repeats or duplicates that already of record does not constitute a basis for reopening a claim for merit review.<sup>12</sup>

Appellant has not submitted any relevant and pertinent new evidence, advanced a legal argument not previously considered by the Office nor argued that the Office erroneously interpreted a specific point of law. Thus, she has not met the criteria to have the Office reopen her case for review on the merits.<sup>13</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 25, 2008 is affirmed.

Issued: March 6, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *L.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

<sup>13</sup> See *supra* note 11 (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).