

realized her condition was employment related when she heard something in her lower back pop while lifting a package off the counter.

On May 3, 2007 the Office notified appellant that the evidence submitted was insufficient to establish her claim. It advised her to identify the specific employment duties she believed caused or contributed to her condition and provide a medical narrative from her treating physician, which contained a diagnosis and a rationalized opinion as to the cause of her condition.

Subsequent to the May 3, 2007 letter the Office received factual and medical information including a January 4, 2007 operative report for L4 through S1 anterior lumbar interbody fusion with interbody cages, L4 through S1 posterolateral fusion with L4 through S1 segmental instrumentation and bilateral L5 to S1 foraminotomies and an April 18, 2007 statement by Larry J. Darsam, Jr., postmaster.

In a June 4, 2007 decision, the Office denied appellant's claim for compensation benefits finding that the medical evidence did not establish that the claimed back condition was causally related to her employment.

On January 28, 2008 appellant requested reconsideration.

By decision dated March 18, 2008, the Office denied appellant's request for reconsideration of the merits on the grounds that she failed to raise a substantive legal question or present relevant evidence.¹

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.³ 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.⁴

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

¹ The Board notes that appellant submitted additional evidence subsequent to the March 18, 2008 decision and with her appeal. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² 5 U.S.C. § 8101 *et seq.*

³ *Id.* at § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁴ 20 C.F.R. § 10.605.

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁶ 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.⁷

ANALYSIS

Appellant's January 28, 2008 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant also did not submit any pertinent new and relevant evidence, not previously considered by the Office, with her request for reconsideration. Consequently, she is not entitled to a review of the merits of her claim based on the above-noted requirements under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to further consideration of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(2), and thus the Office properly denied her January 28, 2008 request for reconsideration.

CONCLUSION

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

⁵ *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ 20 C.F.R. § 10.607(a). See *Joseph R. Santos*, 57 ECAB 554 (2006).

⁷ 20 C.F.R. § 10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2008 is affirmed.

Issued: November 3, 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