

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

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| _____                                    | ) |                               |
| <b>S.J., Appellant</b>                   | ) |                               |
|  | ) |                               |
| <b>and</b>                               | ) | <b>Docket No. 09-2138</b>     |
|  | ) | <b>Issued: April 23, 2010</b> |
| <b>U.S. POSTAL SERVICE, POST OFFICE,</b> | ) |                               |
| <b>Chicago, IL, Employer</b>             | ) |                               |
| _____                                    | ) |                               |

*Appearances:*  
*James W. Malone, for the appellant*  
*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 August 12, 2009 appellant filed a timely appeal from a June 2, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying reconsideration of an August 6, 2008 merit decision. As over a year has passed since the last merit decision in this case, dated August 6, 2008, and the filing of this appeal, dated August 20, 2009, the Board does not have jurisdiction over the merits of appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the nonmerits of the claim.

**ISSUE**

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

**FACTUAL HISTORY**

On October 12, 2007 appellant, a 36-year-old mail handler, filed an injury claim (Form CA-1) for left foot pain. She attributed her condition to a January 5, 2007 incident when, after standing for an extended period of time, her foot began hurting.

By decision dated November 26, 2007, the Office denied the claim, finding that the evidence of record did not establish that the claimed medical condition was related to her employment.

On December 21, 2007 appellant requested an oral hearing. A hearing was held on May 22, 2008 at which she appeared and testified. At the hearing appellant submitted an attending physician's report dated April 22, 2008 prepared by Dr. Robert Sheffey, a podiatrist, who stated appellant's diagnosis as stump neuroma 3<sup>rd</sup> interspace left foot secondary to surgical excision. Dr. Sheffey checked a box yes indicating that the condition found was caused or aggravated by the employment activity. He also explained that "standing, lifting, pushing, pulling can aggravate the condition."

By decision dated August 6, 2008, the Office affirmed its November 26, 2007 decision, finding that the evidence of record did not establish that the claimed medical condition was related to her employment.

On April 16, 2009 appellant, through her representative, requested reconsideration.

Appellant submitted a September 20, 2008 note bearing an illegible signature and an illegible note, dated September 8, 2008.

Appellant submitted a September 16, 2008 note in which Dr. Sheffey reported that appellant underwent two surgeries to remove soft tissue masses located in the third interspace of her left foot. Dr. Sheffey also reported that appellant continued to experience left foot pain following her second surgery. He speculated that she was "likely suffering from stump neuroma." Dr. Sheffey again pointed out that this condition arose postsurgically in the nerve branch from which a neuroma was excised and, without any explanation, generally stated that it was aggravated by standing on one's feet for extended periods of time because the adjacent metatarsal bones irritate the nerve.

By decision dated June 2, 2009, the Office denied the request, finding that appellant had not raised a substantive legal question or included new and relevant evidence not previously considered by the Office.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> 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.<sup>2</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b)(2).

of the date of that decision.<sup>3</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>4</sup>

### ANALYSIS

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law. His reconsideration request did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant was not entitled to reconsideration under the first two enumerated statutory grounds.

Concerning the third enumerated ground, submission of new relevant and pertinent evidence not previously considered by the Office, appellant submitted a note bearing an illegible signature, an entirely illegible note, and a report dated September 16, 2008 from Dr. Sheffey. The notes bearing the illegible signature cannot be identified as having been prepared by a physician and therefore do not constitute competent medical opinion evidence and provide no grounds for reopening appellant's case for merit review.<sup>5</sup> The entirely illegible note lacks evidentiary value because its substance cannot be ascertained.

Dr. Sheffey speculated in his September 16, 2008 report that appellant was "likely suffering from stump neuroma," and he generally opined that this condition was aggravated by standing on one's feet for extended periods of time because the adjacent metatarsal bones irritate the nerve.<sup>6</sup> This report is repetitive of his April 22, 2008 attending physician's report and still lacks a firm diagnosis and a medical explanation of how appellant's specific job duties on January 5, 2007 caused the current condition. The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office does not constitute a basis for reopening a case for further review on the merits.<sup>7</sup>

On appeal appellant's representative submitted additional evidence. The Board's review of a case is limited to the evidence in the case record that was before the Office at the time of its final decision. Evidence not before the Office will not be considered by the Board for the first time on appeal.<sup>8</sup>

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<sup>3</sup> *Id.* at § 10.607(a).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> *See R.M.*, 59 ECAB \_\_\_ (Docket No. 08-734, issued September 5, 2008); *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>7</sup> *See Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>8</sup> 20 C.F.R. § 501.2(c)(1).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her April 16, 2009 request for reconsideration.<sup>9</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2010  
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

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<sup>9</sup> *Id.* at § 10.606(b)(2).