United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 09-1569**
	)	**Issued: February 17, 2010**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Chamblee, GA, Employer	)	

Appearances:
Thomas P. DeBerry, 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 May 30, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 1, 2008 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision in this case was the Office's November 21, 2007 decision denying appellant's traumatic injury claim. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

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).

FACTUAL HISTORY

On July 19, 2005 appellant, a 52-year-old customer service representative, filed a traumatic injury claim alleging that she sustained injuries to her ankle, knee, arm and hand on her way to work. She stated that, after exiting the bus near her workplace, she walked to the employing establishment, where she fell prior to entering the guard gate.

In a decision dated September 7, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury in the performance of duty. On February 21, 2006 appellant requested reconsideration.

The record contains a March 3, 2006 memorandum of conference between the Office claims examiner and Tonua Johnson of the employing establishment. Ms. Johnson stated that appellant fell between the Marta bus stop, which was on city property and the employing establishment guard station, which was in front of the building to which appellant was assigned. She indicated that the sidewalk on which appellant fell was not owned or operated by the Federal Government.

By decision dated March 7, 2006, the Office denied modification of its September 7, 2005 decision on the grounds appellant had failed to establish that she was injured in the performance of duty. It found that the evidence did not establish that she was injured on property that was owned or operated by the employing establishment.

On April 26, 2006 appellant again requested reconsideration. In a May 11, 2006 decision, the Office denied her request for merit review.

On September 6, 2007 appellant, through her representative, requested reconsideration, contending that appellant's claim should be covered by the proximity rule. The representative argued that, as employees were encouraged to ride the public transport system, and there was no bus stop inside the gate house, the premises should be extended constructively to encompass the area in front of the guard gate where appellant fell.

By decision dated November 21, 2007, the Office denied modification of its previous decisions. The claims examiner found that appellant had not provided any evidence that the sidewalk on which she was injured was not also used by other members of the public or that it was reserved exclusively for employees of her agency for the convenience of her employer. Therefore, the injury was still considered an ordinary, nonemployment hazard of the journey itself, shared by all city bus travelers and pedestrians, and did not fall under the "special circumstances" covered by the proximity rule.

On November 19, 2008 appellant, through her representative, requested reconsideration. He noted that appellant fell within five feet of the employing establishment's gate house, which was used exclusively for employees and persons having business with the employing establishment. The representative contended that there was no evidence of record supporting the employing establishment's assertion that the sidewalk on which appellant fell was not owned or operated by the Federal Government. He also argued that the property maps submitted in support of the reconsideration request established that the sidewalk is on property owned by the

employing establishment. The representative stated that the area surrounding the employing establishment was maintained by the Federal Government, by virtue of the fact that other buildings in the compound are leased by General Services Administration (GSA) to nongovernment entities.

Appellant submitted Marta bus schedules for the area surrounding the employing establishment, a parcel map of buildings and streets surrounding the employing establishment and a satellite map of Chamblee Tucker Road identifying the location of the employing establishment.

By decision dated December 1, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review. It found that the representative's argument was cumulative and the documents submitted in support of the request were irrelevant.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office 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.[2] 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 of the date of that decision.[3] 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.[4] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[5]

ANALYSIS

Appellant's November 19, 2008 request for reconsideration did not demonstrate 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. 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).

[1] 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).

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Id.* at § 10.607(a).

[4] *Id.* at § 10.608(b).

[5] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

In support of her request for reconsideration, appellant submitted Marta bus schedules for the area surrounding the employing establishment; a parcel map and a satellite map of Chamblee Tucker Road identifying the location of the employing establishment and gatehouse. The Board finds that these documents are not relevant to the issue decided by the Office in its November 21, 2007 decision, namely whether the sidewalk on which appellant fell was used by other members of the public as well as employees of the employing establishment.

Appellant's representative contends that the maps submitted show that the gatehouse and adjacent sidewalk were owned by the same entity that owned the employing establishment. However, ownership is not determinative in this case, as the documents provided do not show who owns the property. It is entirely possible that the portion of the property on which the employing establishment is located, including the gate house, was leased to the employing establishment, but that the driveway and sidewalk outside the gate house were not so leased and, therefore, were not within its control. As the maps and bus schedules do not purport to establish exclusive ownership or control by the employing establishment, they are irrelevant.[6] Further, as the Office previously considered evidence regarding the proximity of the gatehouse to the location of the fall, the documents are also cumulative and duplicative in nature.[7] The Board finds that the documents submitted do not constitute relevant and pertinent new evidence not previously considered by the Office.[8] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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 November 19, 2008 request for reconsideration.

On appeal, counsel argues that appellant was denied due process by the Office's arbitrary and capricious denial of her claim. As noted, the Board does not have jurisdiction over the merits of this case, but rather is limited to an analysis of whether appellant has submitted sufficient evidence to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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).

[6] Counsel's argument that coverage should be conferred because the property was leased by GSA for other federal agencies is without merit. His statement does not constitute evidence in this case; nor would the fact that GSA leased the property establish that the area was set aside for the exclusive use of the employing establishment employees.

[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).

[8] *See Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2010
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