

FACTUAL HISTORY

On September 26, 2005 appellant, then a 61-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on February 2, 1998 when a general purpose mail container cage door made of steel fell onto the back of her right hand. She asserted that her trainer, six other coworkers and the station manager saw the bruise on her right hand which was caused by the cage door impact.

In a November 22, 2005 decision, the Office denied her claim that she sustained a work-related injury on February 2, 1998 on the grounds that her claim was untimely filed. It determined that appellant's claim was untimely because she did not file a claim within three years of the claimed February 2, 1998 injury and did not give notice to her immediate supervisor within 30 days.

After a hearing, an Office hearing representative issued an August 11, 2006 decision remanding the case to the Office to request that Cindy Calloway, appellant's immediate supervisor at the time of the claimed injury, comment on whether appellant gave notice of her alleged February 2, 1998 work injury within 30 days of February 2, 1998.

In an August 29, 2006 letter, Ms. Calloway stated that she did not recall or believe that appellant reported to her that she sustained a February 2, 1998 accident at work. She added that she had been a supervisor for over seven years and was well aware of the reporting procedures for on-the-job injuries.

In a September 29, 2006 decision, the Office again denied appellant's claim that she sustained a work-related injury on February 2, 1998 on the grounds that her claim was untimely filed. At an August 21, 2007 hearing before an Office hearing representative, appellant asserted that she provided written notice of her claimed February 2, 1998 injury by late December 2000. In a December 14, 2007 decision, the Office hearing representative affirmed the Office's September 29, 2006 decision.

In May 31, 2008 statements, appellant requested reconsideration of the Office's denial of her claim for a February 2, 1998 work injury. She argued that the record contained medical reports and witness statements showing that she sustained a February 2, 1998 work injury and asserted that a polygraph examination showed that she reported the injury in a timely manner. Appellant detailed the medical treatment she underwent, including treatment for her right hand, and discussed claims she filed with the Office for other claimed conditions. She asserted that several supervisors committed wrongdoing in their dealings with her and discussed Equal Employment Opportunity (EEO) claims she had filed. In a June 27, 2008 statement, appellant provided additional discussion of the medical treatment of her upper extremity condition and the Office's handling of the various claims she filed.

Appellant submitted: copies of a traumatic injury claim for a February 2, 1998 injury which she filed on September 15, 2005; a traumatic injury claim for a July 31, 2000 injury which she filed on October 3, 2005; handwritten communications she made with an Office hearing representative in February 2008; occupational disease claims she filed on April 28 and June 2, 2008; an employing establishment document detailing her pay information; a June 25, 2008 letter

from the employing establishment detailing her filing of a duplicate claim for a February 2, 1998 injury; an illegible prescription note; documents concerning a law suit she filed on June 20, 2008 in the California Superior Court against the County of Yolo; a request for affidavits in connection with an EEO case; the findings of a July 27, 2002 electrocardiogram and an August 3, 2000 medical report describing her upper extremity condition.

In a September 16, 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).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ 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.⁴ 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.⁵ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁶ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a claim.⁷

ANALYSIS

The Office denied appellant's claim that she sustained a right hand injury at work on February 2, 1998 on the grounds that her claim was untimely filed. In support of her reconsideration request, appellant generally argued in her May 31 and July 3, 2008 statements that medical reports, witness statements and other documents already in the record showed that she filed a claim for a February 2, 1998 injury in a timely manner. The advancement of this argument would not require reopening of appellant's case for further review of the merits of her case because the Office already considered and rejected these arguments.⁸ Appellant alleged that

² 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ *See supra* note 6.

several supervisors committed wrongdoing in their dealings with her. This argument would not require reopening of her claim for merit review because she did not explain how her assertions in this regard related to the main issue of the present case, *i.e.*, whether she filed a timely claim for a February 2, 1998 injury.⁹

Appellant submitted copies of several traumatic injury and occupational disease claims she filed with the Office, communications she made with an Office hearing representative, documents from the employing establishment of an administrative nature, medical reports and documents concerning EEO claims and a lawsuit filed in state court. Most of these documents had previously been in the record and had already been considered by the Office. Moreover, none of these records are directly relevant to the main issue of the present case. These documents do not provide any support whatsoever for appellant's claim that she filed a timely claim for a February 2, 1998 work injury.

Appellant has not established that the Office improperly denied her request for further review of the merits of its December 14, 2008 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

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).

⁹ See *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 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