

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, MORGAN)
PROCESSING & DISTRIBUTION CENTER,)
New York, NY, Employer)

Docket No. 09-1393
Issued: January 19, 2010

Appearances:

Alan J. Shapiro, Esq., 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 May 6, 2009 appellant filed a timely appeal from a March 30, 2009 decision of the Office of Workers' Compensation Programs denying his request for reconsideration of the merits of his claim. Because more than one year has lapsed between the date of the filing of this appeal on May 6, 2009 and the date of the most recent merit decision of January 22, 2008, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On December 6, 2007 appellant, then a 61-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2007 he sustained a contusion of his right index

finger. He claimed that he was putting his equipment away in a cage when the door slammed on his hand. Appellant did not stop working. The employing establishment controverted the claim alleging that appellant's statement did not support the facts found by an investigation team.

By decision dated January 22, 2008, the Office denied appellant's claim finding that the record did not establish that the claimed incident occurred at the time, place and in the manner alleged. It also found that the medical evidence was insufficient to establish that appellant sustained an injury related to his employment.

On February 21, 2008 appellant filed a request for reconsideration.

By decision dated April 11, 2008, the Office denied appellant's request for reconsideration on the grounds that he did not submit new and relevant evidence, argue that the Office erroneously applied a specific point of law or advance a relevant and previously unconsidered legal argument.

On December 29, 2008 appellant filed a second request for reconsideration.

In a December 20, 2008 time analysis form, the employing establishment indicated that appellant took leave without pay for the period January 19 through February 15, 2008 for therapy.

By decision dated March 30, 2009, the Office denied appellant's request for reconsideration finding that he did not raise a substantive legal question or include new and relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.² The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ 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.⁵ To be entitled to a merit

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8128(a).

³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(2).

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.⁶ 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.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

The issue is whether the Office properly denied appellant's request for reconsideration. Appellant did not advance a relevant legal argument or show that the Office erroneously interpreted a specific point of law. Further, the only evidence he submitted after the January 22, 2008 decision was a December 20, 2008 time analysis form. There, the employing establishment indicated that appellant took leave without pay from January 19 through February 15, 2008 for therapy. This evidence does not address appellant's claimed finger injury and is, therefore, not relevant to the instant issue of whether appellant injured his right index finger in the performance of duty.¹⁰

As appellant did not meet any of the elements required for merit review, the Board finds that the Office properly declined to reopen appellant's case for merit review.¹¹

CONCLUSION

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

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ See *Elaine M. Borghini*, 57 ECAB 549 (2006).

¹¹ See *J.M.*, 60 ECAB ___ (Docket No. 09-218, issued July 24, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2009 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