

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

L.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 10-52
Issued: July 2, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 7, 2009 appellant filed a timely appeal from an April 9, 2009 nonmerit decision of the Office of Workers' Compensation Programs. As more than 180 days have passed since the last merit decision in this case, dated December 30, 2008, and the filing of this appeal, the Board lacks jurisdiction over the merits of appellant's claim.¹

ISSUE

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

FACTUAL HISTORY

On September 23, 2008 appellant, a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) for a head injury she sustained on September 17, 2008, because of a faulty shelf.

¹ For decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

Appellant submitted evidence supporting her claim. She submitted a September 23, 2008 computerized tomography scan report, which stated an impression of “normal exam[ination],” a September 29, 2008 return to work certificate from Dr. Karla L. Houston-Gray, an internist, a November 5, 2008 report from Dr. Robert L. Satoke, a Board-certified neurologist, and a December 5, 2008 narrative report from Dr. Houston-Gray, who diagnosed headache, which she opined developed after a “150[-]pound shelf fell on [appellant].” Dr. Houston-Gray also stated: “[Appellant] was later seen by neurology [*sic*] who felt that her headaches were secondary to head injury [*sic*] and made some medication suggestions.”

By decision dated December 30, 2008, the Office denied the claim because, although it accepted that the identified employment incident occurred as alleged, appellant had not established that this incident caused a medically-diagnosed injury.

On March 17, 2009 appellant requested reconsideration.

Appellant submitted another copy of Dr. Houston-Gray’s December 5, 2008 note.

By decision dated April 9, 2009, the Office denied the request, without conducting a merit review.

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

ANALYSIS

Appellant’s reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to merit review under the first two enumerated grounds under 20 C.F.R. § 10.606(b)(2).

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).

Concerning the third enumerated ground, appellant submitted an additional copy of Dr. Houston-Gray's December 5, 2008 note. This evidence was previously of record and considered by the Office in rendering its December 30, 2008 decision and, therefore, provides no grounds for reopening a case for merit review.⁶

On appeal appellant submitted additional evidence. The Board's jurisdiction however is limited to the evidence that was before the Office at the time of its last decision. The Board is precluded from considering new evidence on appeal. Appellant may submit this evidence, along with a request for reconsideration, to the Office. 20 C.F.R. § 501.2(c)(1).

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim.

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).

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *James W. Scott*, 55 ECAB 606 (2004).