

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

K.E., Appellant)	
)	
and)	Docket No. 09-1217
)	Issued: March 22, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Columbus, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 6, 2009 appellant, through her representative, filed a timely appeal from the March 19, 2009 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's March 19, 2009 decision.

ISSUE

The issue is whether the Office properly denied appellant's March 1, 2009 request for reconsideration.

FACTUAL HISTORY

On the prior appeal,¹ the Board found that the Office properly terminated appellant's compensation for the accepted medical conditions of left hand contusion, left wrist sprain and reflex sympathetic dystrophy (RSD). The Board found that the May 12, 2007 opinion of

¹ Docket No. 08-1461 (issued December 17, 2008).

Dr. Gerald S. Steiman, a Board-certified neurologist and Office referral physician, stood as the weight of the medical opinion evidence. Dr. Steiman explained in detail that appellant exhibited none of the 11 objective criteria of RSD, as stated in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

The Board further found that subsequently submitted medical evidence from appellant's physicians was of diminished or little probative value because it either did not diagnose RSD or did not adequately explain what current findings supported such a diagnosis or how appellant met the objective criteria for a formal diagnosis of RSD.²

On March 1, 2009 appellant requested reconsideration. She submitted the January 21, 2009 report of Dr. Ann M. McLean, an osteopath, who related appellant's history of injury and current complaints. Dr. McLean stated that she did have Dr. Steiman's report, indicating appellant did not have RSD. After describing her findings on physical examination, she reported an impression of left upper extremity pain. "I would agree that based on today's examination that this does not meet criteria for [RSD]. Etiologies could include cervical radiculopathy or compressive neuropathy of the left upper extremity or soft tissue injury causing pain, although that would be unusual for the pain to continue since 1999." Dr. McLean recommended a magnetic resonance imaging (MRI) scan of the cervical spine to evaluate for an etiology. She stated that she was going to schedule an electromyogram (EMG), and if that workup was negative, she would consider a bone scan for further evaluation of RSD. Finally, Dr. McLean stated that she would like to review appellant's records, especially the previous workup, including EMG, MRI scan and a previous neurologic examination in which RSD was diagnosed. "I am uncertain if she initially had RSD symptoms or signs at the time of that diagnosis."

In a decision dated March 19, 2009, the Office denied appellant's request for reconsideration. It found Dr. McLean's report to be cumulative and repetitive of earlier medical opinions stating that appellant no longer had RSD. The Office therefore considered the report as presenting no new evidence.

LEGAL PRECEDENT

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.³ The employee shall exercise this right through a request to the district Office.⁴

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth

² The facts of this case, as set out in the Board's prior decision, are hereby incorporated by reference. On December 7, 1999 appellant, a casual clerk, sustained a traumatic injury when her left hand was caught between two pie carts. The Office accepted her claim for left hand contusion, left wrist sprain and RSD. Appellant received compensation for temporary total disability on the periodic rolls.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.605.

arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁶ The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.⁷

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of the three standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

Appellant made her March 1, 2009 request for reconsideration within one year of the Board's December 17, 2008 merit decision affirming the Office's termination of compensation. Her request is therefore timely. The question is whether appellant's request meets at least one of the three criteria for obtaining a merit review of her case.

In her March 1, 2009 request for reconsideration, appellant did not attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. Instead, she submitted a January 21, 2009 report from Dr. McLean, an osteopath. The question therefore becomes whether this evidence constitutes relevant and pertinent new evidence not previously considered by the Office.

Dr. McLean agreed with Dr. Steiman that appellant did not meet the criteria for RSD. This only reinforced Dr. Steiman's opinion and the Office's termination of compensation for RSD. So the Office was right that Dr. McLean's opinion offered nothing new. Dr. McLean speculated what might be causing appellant's pain and recommended further studies and a review of her record. But this in no way supports that appellant continues to suffer from a firmly diagnosed medical condition causally related to the December 7, 1999 incident at work.

⁵ *Id.* at § 10.606.

⁶ *Id.* at § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (January 2004) (emphasis deleted).

⁸ 20 C.F.R. § 10.608.

The Board therefore finds that the evidence appellant submitted to support her request for reconsideration does not constitute relevant and pertinent new evidence not previously considered by the Office. Because appellant's request did not meet at least one of the three criteria for obtaining a merit review of her case, the Board finds that the Office properly denied appellant's request for reconsideration. The Board affirms the Office's March 19, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's March 1, 2009 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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