

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

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**Docket No. 09-2204
Issued: May 5, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 2, 2009 appellant filed a timely appeal from an August 11, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying his reconsideration request. Because more than 180 days have passed since the Office's last merit decision, dated January 8, 2009, and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

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

¹ For Office 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) (2008).

FACTUAL HISTORY

On May 5, 2009 appellant, a 60-year-old maintenance laborer custodian, filed an occupational disease claim (Form CA-2) for a herniated disc which he attributed to employment activities including standing, walking, bending, stooping, reaching, twisting, pushing and pulling. He first recognized his condition on November 7, 2007 and realized his condition was caused by his federal employment on November 27, 2007.

Appellant submitted medical evidence in support of his claim including: December 26, 2007 magnetic resonance imaging scan studies of the cervical, thoracic and lumbar spines from Dr. J. Thomas Knight, a Board-certified radiologist; a January 2, 2008 electromyogram report from Dr. Bruce Khury, a Board-certified family practitioner; and a January 5, 2008 report from Dr. John A. Sazy, a Board-certified orthopedic surgeon.

By decision dated July 25, 2008, the Office accepted that appellant established the alleged employment factors but denied the claim because the evidence of record did not demonstrate that the claimed medical condition was caused by the established employment factors.

On August 17, 2008 the Office received an August 4, 2008 duty status report on which the physician's signature is illegible.

On September 4, 2008 appellant requested reconsideration. On September 8, 2008 the Office received an August 28, 2008 narrative report from Dr. Sazy.

By decision dated January 8, 2009, the Office denied his reconsideration request, after merit review.

On May 8, 2009 appellant requested reconsideration. Appellant did not submit any new medical evidence.

By decision dated August 11, 2009, the Office denied 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 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

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).

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 May 8, 2009 reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a merit review of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit new relevant and pertinent evidence that had not previously been considered by the Office. Accordingly, he was not entitled to a merit review of his claim under the third enumerated ground.

Appellant did not 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 new relevant and pertinent evidence not previously considered by the Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.⁶

CONCLUSION

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

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *See id.* at § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 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