

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

---

T.B., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Chicago, IL, Employer )

---

**Docket No. 10-767**  
**Issued: November 15, 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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 19, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated August 7, 2009, denying her request for further merit review of her claim. Because more than 180 days elapsed between the most recent merit decision of June 12, 2009 to 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.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On January 27, 2009 appellant, then a 42-year-old mail clerk, filed an occupational disease claim alleging that she sustained bilateral ganglion cysts in the performance of duty. She became aware of the disease or illness on February 14, 2007. Appellant stopped work on April 6, 2002.

In a March 5, 2009 statement, appellant indicated that her injury began on December 14, 2007 when she was instructed to attend an impartial medical examination regarding another claim. She alleged that the physician performed various tests on her hands and wrists and that, later, she experienced pain and was diagnosed with bilateral ganglion cysts.

In a letter dated March 11, 2009, Sheila Spane, a health and resources management specialist, controverted the claim. She stated that appellant had a prior claim under File No. xxxxxx279. She noted that appellant retired on disability effective April 21, 2008.

By letter dated March 23, 2009, the Office informed appellant of the evidence needed to support his claim and requested that he submit additional evidence within 30 days.

In a May 13, 2008 report, Dr. Perry Rudich, a Board-certified diagnostic radiologist, diagnosed bilateral wrist ganglion cysts. In a June 26, 2008 ultrasound examination, he diagnosed mild left median nerve entrapment and probable mild right median nerve entrapment.

In an April 7, 2009 report, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, noted treating appellant since August 1, 1995. He advised that she was diagnosed with multiple tendinitis/enthesopathy, carpal tunnel syndrome and wrist sprain. Dr. Chmell advised that these conditions were accepted by the Office and appellant continued to experience hand and wrist pain. He related that, on December 14, 2007, appellant was examined by an Office physician who painfully manipulated and forced both wrists into positions that they had not been in for many years. Dr. Chmell opined that because her wrists were forced into these positions, additional trauma was sustained and ganglion cysts ensued.

In a decision dated June 12, 2009, the Office denied appellant's claim. It found that the injury did not occur in the performance of duty. It found that none of the medical evidence established the cause of the bilateral ganglion cysts to be the December 14, 2007 examination.<sup>1</sup>

On June 25, 2009 appellant requested reconsideration. She alleged that during her December 14, 2007 impartial medical examination, the x-ray technician performed a series of x-rays on both hands. Appellant alleged that her wrists were painfully forced into awkward positions. Thereafter, she experienced burning sensations, numbness and tingling and developed a protruding lump on each of her hands and wrists. Appellant was diagnosed with dorsal ganglion cysts of the right and left wrists and enclosed pictures of hand positions during the examination.<sup>2</sup>

By decision dated August 7, 2009, the Office denied appellant's request for reconsideration without a review of the merits, finding that her request was insufficient to warrant further merit review.

---

<sup>1</sup> The Office indicated that appellant had a separate claim under No. xxxxxx279. Matters pertaining to claim number xxxxxx279 are not before the Board on the present appeal.

<sup>2</sup> Appellant stated that she was submitting a May 13, 2008 results of x-ray examination with her request. No May 13, 2008 report accompanied the reconsideration request.

### LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>4</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>5</sup>

### ANALYSIS

Appellant disagreed with the Office's June 12, 2009 decision, which denied her claim for ganglion cysts. She requested reconsideration on June 25, 2009. The underlying issue on reconsideration was medical in nature, whether appellant submitted sufficient medical evidence to establish that her ganglion cysts was sustained during her medical evaluation of December 14, 2007. The Board finds that she did not provide any relevant or pertinent new evidence warranting further merit review.

On reconsideration, appellant argued that her ganglion cysts were caused by the awkward positions in which her hands and wrists were placed by an x-ray technician during an impartial medical examination on December 14, 2007. Her contentions are not relevant to the issue of her claim as it is medical in nature and must be established by probative medical evidence.<sup>6</sup> Appellant's assertions also do not show that the Office erroneously applied or interpreted a specific point of law and they do not advance a relevant legal argument not previously considered by the Office.

---

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

Appellant also submitted photographs of the positions in which her hands were placed during the examination. This evidence is not relevant to the issue of her claim for an injury in the performance of duty, as this underlying issue is medical in nature. The submission of evidence that is not relevant to the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

Consequently, the evidence and argument submitted by appellant on reconsideration does not satisfy any of the three regulatory criteria, noted above, for reopening a claim for merit review.

On appeal appellant reiterated her disagreement with the Office's denial of her claim. The Board notes that it only has jurisdiction to consider whether the Office properly denied further merit review of the claim. To the extent that appellant is arguing that her ganglion cysts arose as a consequential condition of her multiple tendinitis condition, that is not an issue in the present appeal.<sup>8</sup>

### CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

---

<sup>7</sup> *Id.*

<sup>8</sup> This decision of the Board does not preclude appellant from pursuing matters pertaining to other claims not presently before the Board. The Board also notes that, subsequent to the Office's August 7, 2009 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2010  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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