

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

C.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Vega Baja, PR, Employer**

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**Docket No. 10-969
Issued: November 15, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated October 5, 2009 denying his request for reconsideration. Because more than 180 days elapsed since the most recent merit decision dated July 6, 2009, 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 refusal of the Office to reopen appellant's case for further consideration on the merits pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

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

This case was previously before the Board. In a June 12, 2009 decision, the Board set aside the Office's June 24, 2008 nonmerit decision denying appellant's request for merit review and remanded the case for further development and a decision on the merits.² The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

By decision dated July 6, 2009, the Office denied modification of its March 26, 2007 merit decision denying appellant's traumatic injury claim. It found that the medical evidence was insufficient to establish that the accepted incident caused a diagnosed condition.³

In an undated appeal request form, received on July 21, 2009, appellant requested reconsideration. He did not submit any evidence or argument in support of his request.⁴

In an October 5, 2009 decision, the Office denied appellant's reconsideration request, finding that he did not include any new evidence or argument explaining the basis for his request.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁵

The application for reconsideration must set forth 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.⁶

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and reviewed on its merits.⁷ Where the request is

² Docket No. 08-2332 (issued June 12, 2009).

³ On February 7, 2007 appellant, a 58-year-old letter carrier, filed a traumatic injury claim for an injured right finger. He alleged that, on November 31, 2006, while attempting to get inside a postal vehicle to escape a horse that was approaching him at a high rate of speed, he hit his finger.

⁴ The Board notes that appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁵ 20 C.F.R. § 10.605.

⁶ *Id.* at § 10.606.

⁷ *Donna L. Shahin*, 55 ECAB 192 (2003).

timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The Office denied appellant's request for further reconsideration on the merits of his claim on the grounds that he failed to submit any evidence or argument to warrant a merit review. The record reflects that appellant submitted no evidence or argument to the Office subsequent to the July 6, 2009 merit decision on his claim.

Although timely filed, appellant's July 21, 2009 application for reconsideration did not set forth any argument or contain evidence that either: (1) showed that the Office erroneously applied or interpreted a specific point of law; (2) advanced a relevant legal argument not previously considered by the Office; or (3) constituted relevant and pertinent new evidence not previously considered by the Office.⁹ Because he failed to meet at least one of these standards, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.¹⁰

CONCLUSION

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits pursuant to 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.608.

⁹ *Id.* at § 10.606.

¹⁰ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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