

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

F.Z., Appellant

and

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

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**Docket No. 10-1184
Issued: November 10, 2010**

Appearances:
Kenneth W. Claxton, for the appellant
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 March 24, 2010 appellant, through his representative, filed a timely appeal from a September 30, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was an August 10, 2009 decision denying appellant's occupational disease claim. Because more than 180 days elapsed from issuance of the most recent merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office properly declined to reopen appellant's case for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant's representative contends that the Office failed to fully develop his claim or provide guidance on how to get approval of his claim. He requested that the Board remand the case for further development and approval of his claim.

FACTUAL HISTORY

On January 18, 2009 appellant, then a 40-year-old letter carrier, filed an occupational disease claim alleging that the loss of sensation in his left leg, foot and toes, stomach ulcers, bladder problems and gastrointestinal problems were due to standing, driving, walking, twisting and lifting. He first became aware of his conditions and their relationship to his employment on May 29, 2001.

Appellant submitted medical evidence from 2002 to 2008 concerning treatment for back problems, fatigue, nocturia and a bladder condition. The medical evidence includes various reports from Dr. Cynthia A. Garcia, a treating Board-certified internist and physiatrist, and from Dr. Brian O'Donnell, a treating Board-certified family practitioner. Appellant was diagnosed with lumbosacral or thoracic neuritis, L4-5 left radiculopathy L4-5 radicular pain. In a January 7, 2002 report, Dr. Garcia reported that he injured himself on May 29, 2001 while lifting a tray of mail from his truck. On a June 25, 2002 form she checked "yes" to the question of whether the condition was employment related and noted "heavy lifting in awkward position." In a December 2, 2008 report, Dr. O'Donnell diagnosed chronic low back pain.

By letter dated February 20, 2009, the Office informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim, to be submitted within 30 days.

Appellant submitted a February 5, 2009 x-ray report, a statement, a March 3, 2009 Family Medical and Leave Act application and duty status reports dated May and July 6, 2009 diagnosing leg pain and radiculopathy.

By decision dated August 10, 2009, the Office denied appellant's claim. It found that the medical evidence of record was insufficient to establish a causal relationship between his employment duties as a letter carrier and the conditions he alleged.

On September 14, 2009 appellant requested reconsideration. No evidence was submitted with his request.

By decision dated September 30, 2009, the Office denied appellant's request for a merit review.¹

¹ The Board notes that, following the September 30, 2009 decision, the Office received additional evidence. The Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *M.B.*, 60 ECAB ____ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

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 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) submit 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 September 14, 2009 request for reconsideration did not allege or demonstrate 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. Appellant did not submit any evidence with his request for reconsideration. Consequently, he is not entitled to a review of the merits of his claim based on the above-noted requirements under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to further consideration of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(2) and thus the Office properly denied his September 14, 2009 request for reconsideration.

Appellant contends on appeal that the Office offered no assistance in the development of his claim. The Board notes that the Office's February 20, 2009 letter informed appellant of the evidence required to support his occupational disease claim. Appellant has the burden of proof to establish the essential elements of his claim.⁶ While he contends that his claim should have been accepted, the Board does not have jurisdiction over the merits of the case. The only issue on appeal is whether the Office abused its discretionary authority by denying appellant's request for further merit review.

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(2). See *J.M.*, 60 ECAB ____ (Docket No. 09-218, issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ *Id.* at § 10.607(a). See *S.J.*, 60 ECAB ____ (Docket No. 08-2048, issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁵ *Id.* at § 10.608(b). See *Y.S.*, 60 ECAB ____ (Docket No. 08-440, issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *Sedi L. Graham*, 57 ECAB 494 (2006).

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2009 is affirmed.

Issued: November 10, 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