

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

P.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

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**Docket No. 10-1236
Issued: November 16, 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 March 31, 2010 appellant filed a timely appeal from a March 11, 2010 nonmerit decision by the Office of Workers' Compensation Programs. Because more than 180 days elapsed from the last merit decision dated January 26, 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 501.3.¹

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 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

Appellant, a 70-year-old distribution clerk, filed a Form CA-2 claim for benefits on November 1, 2008, alleging that he sustained a possible strain of his left shoulder or left arm in the performance of duty. He first became aware that he had left shoulder pain caused or aggravated by employment factors on October 1, 2008. Appellant sought medical treatment on October 23, 2008 and reported his condition to his supervisor on November 1, 2008.

Appellant submitted an October 23, 2008 report from Dr. William H. Hovis, a Board-certified orthopedic surgeon, who examined him that date for left shoulder pain of approximately three months' duration. He denied any specific injury or that he previously underwent left shoulder surgery. Dr. Hovis stated that appellant underwent a cervical spine fusion procedure in March 2008 and subsequently returned to light duty.

By decision dated January 26, 2009, the Office denied appellant's claim, finding that he failed to establish fact of injury.

On September 30, 2009 appellant requested reconsideration. In a letter received by the Office on October 8, 2009, he stated that he informed his supervisor on October 1, 2008 that he was experiencing severe pain in his left shoulder and left arm. Appellant related that he was treated by Dr. Hovis on two occasions, during which the physician administered injections to his left shoulder. He had been hospitalized on December 22, 2008 for reasons unrelated to his employment and sought medical benefits for treatment of his left shoulder.

By decision dated March 11, 2010, the Office denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require the Office to review the merits of the claim.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. He did not submit any additional medical evidence in

² 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

connection with his September 30, 2009 reconsideration request. Thus, there was no new or relevant evidence for the Office to review.

Appellant reiterated the factual and medical history of his claim: that he had reported the injury to his supervisor and sought medical treatment. His reconsideration request consists of facts that are cumulative and repetitive of those previously presented and evaluated by the Office in the January 26, 2009 decision. Appellant did not provide any new evidence in support of his claim or make any new legal argument to support acceptance of his claim. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.⁴

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 16, 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

⁴ The Board notes that appellant submitted additional evidence to the record following the June 29, 2009 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).