

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

T.C., Appellant

and

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

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**Docket No. 10-780
Issued: October 1, 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 January 27, 2010 appellant filed a timely appeal of a September 29, 2009 decision of the Office of Workers' Compensation Programs denying further merit review. Because over 180 days elapsed between the most recent merit decision of April 23, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 8, 2007 appellant, then a 47-year-old sale service associate, filed an occupational disease claim alleging that she lost her sense of smell due to exposure to paint remover in the performance of duty. In a letter dated November 27, 2007, the Office requested additional factual and medical evidence from appellant and allowed 30 days for a response. On

August 15, 2007 Dr. Steven Horowitz, a Board-certified otolaryngologist, stated that appellant had a decreased sense of smell and taste. He noted that she was exposed to paint and paint thinner at work had a preexisting asthma condition.

In a decision dated February 26, 2008, the Office denied appellant's claim on the grounds that the diagnosis of anosmia was not an acceptable diagnosis.

On October 14, 2008 appellant requested reconsideration. She stated that she had permanent anosmia due to her June 2007 exposure to "Goof Off." On August 19, 2008 Dr. Nedra Joyner, a Board-certified otolaryngologist of professorial rank, diagnosed loss of sense of smell and taste after exposure to "Goof Off." She noted that appellant could taste spicy and sweet but could not tell the difference between foods. Appellant's magnetic resonance imaging scan was normal. Dr. Joyner diagnosed severe microanosmia.

By decision dated December 16, 2008, the Office reviewed the merits of appellant's claim and denied modification of the February 26, 2008 decision.

On February 12, 2009 appellant requested reconsideration. In a report dated August 19, 2008, Dr. Joyner diagnosed severe microanosmia. On February 17, 2009 she stated that appellant had lost the ability to smell and that there was no medical treatment for her condition.

By decision dated April 23, 2009, the Office reviewed the merits of appellant's claim and denied modification of its prior decisions. The Office found that Dr. Joyner's reports established that appellant had a medical condition, but failed to establish a causal relationship between appellant's employment exposure and her diagnosed condition.

On August 4, 2009 appellant requested reconsideration. She submitted a July 1, 2009 letter noting that she sought additional medical treatment.

By decision dated September 29, 2009, the Office denied further merit review of appellant's claim on the grounds that she failed to submit any relevant new evidence or argument in support of her request.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides at section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.¹ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by the Office; or includes relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 of the Office's regulations provide that

¹ 5 U.S.C. §§ 8101-8193, 8128(a).

² 20 C.F.R. § 10.606.

when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.³

The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case. The submission of evidence, which does not address the particular issue involved, does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁴

ANALYSIS

The Office accepted that appellant was exposed to “Goof Off” in the performance of duty. Appellant was diagnosed with a medical condition of severe microanosmia. The Office denied appellant’s claim finding that the medical evidence did not establish a causal relationship between the accepted exposure and the diagnosed condition. Appellant requested reconsideration on August 4, 2009. She submitted a letter in which she noted that she had sought additional medical treatment in July 2009. Appellant did not submit any new medical evidence or legal argument with her August 4, 2009 request for reconsideration. Her request for reconsideration 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 include relevant and pertinent new evidence not previously considered. The Board finds that the Office properly refused to reopen appellant’s claim for consideration of the merits.

CONCLUSION

The Board finds that appellant’s request for reconsideration did not contain the necessary legal argument or relevant and pertinent new evidence to require the Office to reopen her claim for consideration of the merits.

³ *Id.* at § 10.608.

⁴ *M.E.*, 58 ECAB 694 (2007).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 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