

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

D.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 10-593
Issued: September 22, 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 December 30, 2009 appellant filed a timely appeal from a June 29, 2009 nonmerit decision by the Office of Workers' Compensation Programs. Because more than 180 days elapsed from the last merit decision dated March 24, 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 the merits under 5 U.S.C. § 8128.

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

On February 4, 2009 appellant, a 49-year-old mail handler, filed a claim for benefits, alleging that he sustained a right shoulder condition causally related to factors of his employment. He first became aware that his condition was causally related to his federal employment on November 30, 2008.

On February 12, 2009 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit this evidence within 30 days. Appellant did not respond.

In a decision dated March 24, 2009, the Office denied the claim, finding that appellant failed to submit sufficient medical evidence to establish that his claimed condition was related to factors of employment.

On April 14, 2009 appellant requested reconsideration. He submitted a May 11, 2009 notice of separation from the employing establishment. Appellant did not submit any additional medical evidence.

In a June 29, 2009 decision, 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 its prior decision.

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 has not advanced a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent evidence not previously considered by the Office. The evidence he submitted in connection with his April 14, 2009 reconsideration request is not relevant to the issue on appeal. The Board has held that the submission of evidence, which does not address the particular issue involved in the case, does

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).

not constitute a basis for reopening the claim.⁴ The May 11, 2009 notice of separation does not constitute medical evidence pertaining to the issue of whether appellant sustained a right shoulder condition in the performance of duty. His reconsideration request did not provide any new or relevant evidence for the Office to review. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.⁵

CONCLUSION

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

ORDER

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

Issued: September 22, 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 See *David J. McDonald*, 50 ECAB 185 (1998).

⁵ 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).