

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

A.C., Appellant)	
)	
and)	Docket No. 10-1567
)	Issued: March 11, 2011
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Flushing, NY, Employer)	
)	
)	

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 May 25, 2010 appellant filed a timely appeal of a March 11, 2010 nonmerit decision of the Office of Workers' Compensation Programs. The last merit decision in this case was issued on November 16, 2009,¹ pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

The issue is whether the Office properly denied appellant's December 7, 2009 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ The 180-day period expired from this decision on May 5, 2010.

² 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. See 20 C.F.R. §§ 501.2(c) and 501.3(e).

FACTUAL HISTORY

On March 27, 2008 appellant, then a 54-year-old electronic technician, filed a claim for traumatic injury alleging that on March 24, 2008 he sustained a lower back injury when he bent down to retrieve his bag from his toolbox. He also noted that he was being kicked out of the building at the time of the alleged incident.

The employing establishment controverted the claim on the grounds that appellant's alleged injury was not related to a work assignment or job function and did not occur in the performance of duty. It explained that he was not authorized to work since he had rejected a job offer for limited duty on March 4, 2008 and did not have a job assignment at the time of the alleged incident. In a March 28, 2008 letter of controversion appellant's supervisor stated that on March 24, 2008 he notified appellant that because he was on the premises without proper clearance, he was not authorized for work and needed to leave the premises. In another letter of controversion dated March 10, 2008, it was noted that appellant failed to report to a supervisor when he showed up to work on March 24, 2008 and was not assigned any work duties.

On April 11, 2008 the Office advised appellant that the evidence he submitted was insufficient to support his claim and requested additional factual and medical evidence.

Appellant submitted additional medical documentation and a personal statement dated March 27, 2008.

In a decision dated May 13, 2008, the Office denied appellant's traumatic injury claim finding insufficient evidence to establish that the claimed incident occurred or that he sustained a medical condition causally related to the alleged employment incident.

On May 16, 2008 appellant requested a hearing before the Branch of Hearings and Review, which was held on September 17, 2008. He submitted two (CA-17 forms) dated February 19 and April 7, 2008.

By decision dated December 15, 2008, an Office hearing representative accepted as factual that the March 24, 2008 incident occurred, but denied appellant's claim on the grounds of insufficient medical evidence to establish that he sustained a back injury as a result of the employment incident.

On June 29, 2009 appellant submitted a request for reconsideration.

In a decision dated November 16, 2009, the Office affirmed the May 13, 2008 decision with modification. It found that appellant's injury did not occur in the performance of duty since he was retrieving personal property, was not authorized to work at the time he was injured, and was not performing any duty or function reasonably incidental to his employment.

On December 7, 2009 appellant submitted a request for reconsideration claiming that his injury occurred in the performance of duty because he was looking for his identification (ID) badge at his supervisor's request. He submitted a February 19, 2008 CA-17 form, a March 25, 2008 e-mail, a March 27, 2008 personal statement with various exhibits, a March 28, 2008 letter

of controversion from the employing establishment and excerpts from the September 17, 2008 hearing transcript.

By decision dated March 11, 2010, the Office denied appellant's request for reconsideration finding the evidence submitted was previously considered and the arguments presented were duplicative and immaterial.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether to review an award for or against compensation.³ The Office's regulations provide that the Office may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.⁴

To require the Office to reopen a case for merit review pursuant to the Act, the claimant must provide evidence or an argument that: (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.⁵ A request for reconsideration must also be submitted within one year of the date of the Office decision for which review is sought.⁶ 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.⁷

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record or does not address the particular issue involved does not constitute a basis for reopening a case.⁸ While 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.⁹

³ 5 U.S.C. § 8128(a); *see also D.L.*, 61 ECAB __ (Docket No. 09-1549, issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.605; *see also R.B.*, 61 ECAB __ (Docket No. 09-1241, issued January 4, 2010); *A.L.*, 60 ECAB __ (Docket No. 08-1730, issued March 16, 2009).

⁵ *Id.* at § 10.606(b); *see also L.G.*, 61 ECAB __ (Docket No. 09-1517, issued March 3, 2010); *C.N.*, 60 ECAB __ (Docket No. 08-1569, issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁹ *E.M.*, 60 ECAB __ (Docket No. 09-39, issued March 3, 2009); *Jennifer A. Guillary*, 57 ECAB 485 (2006); *Vincent Holmes*, 53 ECAB 468 (2002).

ANALYSIS

The Board finds that the Office properly denied appellant's December 7, 2009 request for reconsideration because he did not meet any of the requirements warranting reconsideration under 20 C.F.R. § 10.606(b). Appellant did not allege that the Office erroneously applied or interpreted a specific point of law. He also failed to advance a relevant legal argument not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office.

Appellant submitted a February 19, 2008 CA-17 form, a March 25, 2008 e-mail, a March 27, 2008 personal statement, a March 28, 2008 controversion letter, excerpts from the September 17, 2008 hearing transcript and copies of previous Office decisions. These materials were all previously considered in the May 13 and December 15, 2008 merit decisions. It is well-established that evidence which duplicates that previously submitted has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ The Board finds that appellant failed to submit new pertinent or relevant evidence sufficient to warrant reopening the case.

Additionally, appellant's argument that he was retrieving his personal tool box in order to find his ID badge at his supervisor's request is insufficient to warrant reconsideration. Although not previously proffered, this argument is immaterial to the issue of whether he was authorized to be on the premises of the employing establishment or in the performance of duty at the time of the incident.¹¹ Appellant did not address the performance of duty issue of whether he was scheduled to work or perform any employment duties at the time in question. The fact that his ID badge may have been in his tool box is not relevant to whether he was authorized to report to work or perform any employment duties.¹² Appellant did not advance a new relevant argument sufficient to constitute further review on the merits.

The Board finds that appellant 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 submit relevant and pertinent new evidence not previously considered by the Office. Accordingly, the Office properly denied merit review of his claim.

CONCLUSION

The Board finds that the Office properly denied appellant's December 7, 2009 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹⁰ See *Ronald A. Eldridge*, *supra* note 8.

¹¹ See *E.S.*, 58 ECAB 340 (2007).

¹² See *A.K.*, 61 ECAB ___ (Docket No. 09-2032, issued August 3, 2010) (where the Board found that appellant's injury did not occur in the performance of duty as he was performing a personal task when returning to his vehicle, even though he also retrieved his ID badge).

ORDER

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

Issued: March 11, 2011
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