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

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| **DAVID P. CHASTEEN, Appellant** | ) | |
| **and** | ) | **Docket No. 06-530** |
| | ) | **Issued: April 21, 2006** |
| **U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer** | ) | |

*Appearances:*
*Ron Watson*, for the appellant
*Office of the Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On January 6, 2006 appellant filed a timely appeal from a December 1, 2005 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated September 8, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501(c)(2) and 501.3(d)(2).

### *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.

### *FACTUAL HISTORY*

Appellant, a 49-year-old letter carrier, injured his right arm on October 3, 2003 while reaching up to grab a football in the employing establishment parking garage. Appellant stated that he was engaged in a mandatory vehicle check when he reached up to catch a pass thrown in his direction by another employee. He slipped on a wet, slippery surface and injured his arm.

Appellant filed a claim for benefits on October 9, 2003. The employing establishment controverted the claim, asserting that he was playing catch with coworkers at the time of the alleged injury, which was not part of his assigned work duties.

In an investigative memorandum dated October 20, 2003, the employing establishment inspection service found, based on interviews with appellant, several postal inspectors and three coworkers present at the time of the October 3, 2003 incident, that appellant was engaged in a game of catch with his coworkers at the time of injury. It contended that the injury was unrelated to his work duties and sustained while throwing a football back and forth in the parking lot. Therefore, appellant did not sustain his injury while in the performance of duty.[1]

On November 26, 2003 appellant asserted that, at the time of the October 3, 2003 injury, he was on his way toward performing a required check of his postal vehicle. The injury occurred when he stepped out of the elevator leading into the parking garage, at which time a football came towards him and a coworker. Appellant put his arm up and deflected the football, then continued walking toward his vehicle when someone again threw the football at him. When he reached up to catch the ball, he stepped on something wet and slippery on the floor, fell to the ground and hurt his right arm.

By decision dated December 12, 2003, the Office denied the claim finding that appellant did not sustain injury while in the performance of duty.

By letter dated December 29, 2003, appellant's representative requested an oral hearing, which was held on June 10, 2004.

By decision dated September 8, 2004, an Office hearing representative affirmed the December 12, 2003 Office decision.

On September 2, 2005 appellant's representative requested reconsideration and contended:

> "The precise location where the injury occurred was a place where the employees normally perform the required duty of checking his/her vehicle each morning as required by the employer. The employee was in the process of performing the assigned duty immediately preceding the injury. This mixture of oil, from [employing establishment] vehicles, and the water condensation on the floor contributed to [appellant] slipping and falling.
>
> "Letter carriers spend a good part of their morning performing office duties, in which they are in a close association with one another, in the garage performing their vehicle check or at their cases inside the office for a considerable period of time casing mail. Anytime there are a group of employees working together for an extended period of time types of 'horseplay' occur. There was not 'willful

[1] The memorandum noted that there were several discrepancies in appellant's original account of the October 3, 2003 incident.

misconduct' on the part of [appellant], nor was there an intent to hurt himself or others.

"Although the [employing establishment] stated that horseplay is not condoned the fact is that the injury of [appellant] was made into an 'office joke.' A chalk outline of a figure was drawn on the garage floor, with a sign stating R.I.P. and surrounded with lit candles which, when brought to management's attention by another employee, was laughed at and condoned with no attempt to investigate as to who placed lighted candles in an enclosed garage area or even a stand up talk addressing the dangers of such an act....

"Although the hearing representative states that 'the football was not furnished or made readily available by the employer' the situation of the oil/water on the floor of the [employing establishment] garage was a contributing factor causing [appellant] to slip and fall. This issue of [appellant's] slipping on this substance was addressed at the hearing."

Appellant submitted statements from coworkers Patrick Wolff, Lori McCullough and Ramon Padilla in support of his request. In an August 4, 2005 statement, Mr. Wolff asserted:

"On or about the first week of October 2003 I began tour in the Pacific Beach Post Office around 7:30 a.m. After clocking on I immediately proceeded to the parking garage to do my daily vehicle inspection and was shocked and stunned at what I clearly saw.

"In the center of the greasy garage floor were several lit candles placed on the ground around a body figure chalked out on the concrete. There was a small, 'R.I.P.' sign laying (sic) on the ground next to the chalked out body figure. I immediately went back upstairs and contacted carrier supervisor Terry Shafer who came downstairs right away to see the incident in the parking garage. [He] thought it was a big joke as did the other supervisor on the floor that morning. They must have laughed five minutes about it. I didn't understand what was so funny.

"Our parking garage in Pacific Beach has been full of grease for years and is always extremely slippery in a lot of spots. Management has been aware of this problem for years. There are many slippery oil spots in the garage. All verbal requests to clean the grease from the garage always just [gets] ignored with nothing getting done about it. I have no knowledge of any stand up talk ever being given in Pacific Beach Station following this incident [indicating that] this behavior is unacceptable."

In her August 31, 2005 statement, Ms. McCullough indicated as follows:

"During the first week of October 1, 2003 there was an unsafe incident that occurred in the underground parking garage of the Pacific Beach Post Office.

> One of the carriers in this station was injured in the garage, and as a practical joke some carrier thought it would be funny to draw a chalk outline of body and burn a few candles next to it. Management never addressed the issue of how unsafe it was to burn candles in an underground garage with gas fumes around."

In a September 1, 2005 statement, Mr. Padilla related that he found pictures concerning the incident in a trash can. In a statement dated September 2, 2005, appellant's representative indicated that pictures had been taken of the chalk outline of a body where appellant fell, and where flowers and lighted candles had been placed. He asserted that management had taken these pictures, which wound up in a trash can inside the post office and Mr. Padilla subsequently found them there. Appellant's representative stated that management had subsequently denied that it had taken any pictures of the chalk outline, flowers and candles on the accident site.

Appellant also submitted medical records from November 2003 through March 16, 2005 pertaining to his right arm and right shoulder conditions in support of his request for reconsideration.

By decision dated December 1, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included 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; and he has not constituted relevant and pertinent evidence not previously considered by the Office. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[4] The evidence appellant submitted is not pertinent to the issue on appeal. The statements from coworkers which appellant submitted are not relevant, as none of these employees were actually present at the time of the injury. Therefore none of them actually witnessed the October 3, 2003 incident, and none of them corroborated appellant's account of the

[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).

[4] *See David J. McDonald*, 50 ECAB 185 (1998).

incident. Thus, these statements did not address the relevant issue of whether appellant's October 3, 2003 right arm injury was sustained in the performance of duty. Further, the medical evidence appellant submitted is not relevant as the issue on appeal is factual, not medical, in nature. Finally, appellant's argument that his injury occurred when he happened to reach up and react to a football thrown in his direction while engaged in a mandatory vehicle check was previously considered and rejected by the Office and is therefore cumulative and repetitive. 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.

## ***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 December 1, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 21, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board