United States Department of Labor
Employees' Compensation Appeals Board

DORIS J. EDDY, Appellant	)	
and	)	**Docket No. 03-2135**
	)	**Issued: February 23, 2004**
U.S. POSTAL SERVICE,	)	
POST OFFICE, Des Moines, IA, Employer	)	

Appearances:
Randy Krueger, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 4, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 7, 2003, which denied her request for reconsideration on the grounds that the evidence submitted was of a cumulative nature. She also appealed from an Office merit decision dated August 21, 2002. Because more than one year elapsed between the last merit decision of August 21, 2002 and the filing of this appeal on September 4, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2 (c) and 501.3(d)(2).[1]

ISSUE

The issue on appeal is whether the Office properly denied appellant's request for reconsideration on July 7, 2003.

[1] Based on the date of filing of appellant's application on appeal, there are also Office decisions dated March 13 and April 22, 2003 which granted appellant a schedule award for 15 percent impairment of the right upper extremity and 14 percent of the left upper extremity respectively, within the Board's jurisdiction. *See* section 501.2(c). As appellant, however, has not contested either decision on appeal by the Board on this appeal. *See* 20 C.F.R. § 501.3(a). (The decision must be adverse to the claimant.)

FACTUAL HISTORY

On November 8, 2000 appellant, then a 58-year-old mail handler, filed an occupational disease claim alleging that beginning July 1, 1999 she developed a bilateral hand condition caused by employment factors. On March 26, 2001 the Office accepted the claim for bilateral carpal tunnel syndrome and right third trigger finger and authorized carpal tunnel and right third trigger finger surgical releases. Appellant did not stop work as a result of the accepted claim.

On April 14, 2001 appellant filed a Form CA-7 claim for compensation alleging temporary total disability for 300 intermittent hours during the period from September 29, 1999 through April 4, 2001 due to the accepted employment-related conditions.

On June 29, 2001 the Office denied appellant's claim for compensation benefits on the grounds that the medical evidence failed to support temporary total disability for the period claimed. In a letter dated July 26, 2001, she requested an oral hearing before an Office hearing representative which was held on June 27, 2002.

By decision dated August 21, 2002, an Office hearing representative affirmed the June 29, 2001 decision. The Office hearing representative determined that the medical evidence of record did not contain objective findings sufficient to establish that appellant was totally disabled during the period claimed as a result of her accepted employment-related conditions. The Office hearing representative noted that the medical evidence submitted contained a report from Dr. Edward Steinmann, an osteopath and appellant's family physician, who supported a finding that appellant was disabled on a series of specified dates. However, the physician's review was based on a series of notes by a physician's assistant and did not indicate that he had personally examined appellant on the specified dates. The Office hearing representative found that the evidence was insufficient to establish that appellant was disabled due to her accepted condition or entitled to compensation for wage loss.

In a letter dated June 17, 2003, appellant requested reconsideration of the August 21, 2002 decision. In support of her request, she expressed her disagreement with the hearing representative's findings and argued that the physician's assistant who examined her was under the supervision of Dr. Steinmann. Appellant also resubmitted documentation including an attending physician's report, a health certification and work restrictions signed by Dr. Steinmann's physician's assistant. Appellant indicated that she submitted a new report from Dr. Steinmann dated September 12, 2002; however, the report is not contained in the record.

By decision dated July 7, 2003, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was of a cumulative nature and, thus, insufficient to warrant further merit review of her claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's regulations provide that a claimant must:

[2] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

(1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[3] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[4] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[5]

ANALYSIS

In the August 21, 2002 decision, an Office hearing representative affirmed the determination that the medical record lacked probative evidence to support appellant's claim for total disability for 300 intermittent hours claimed from September 29, 1999 to April 4, 2001 as a result of the accepted employment injury. Appellant requested reconsideration on June 17, 2003 and argued that the reports submitted by the physician's assistant who examined her at the time of the alleged absences should be given weight because he was under the direct supervision of Dr. Steinmann, her attending osteopath. She resubmitted many of the physician's assistant reports previously considered in the August 21, 2002 decision and indicated that she submitted a new report dated September 12, 2002 from Dr. Steinmann; however, it is not found in the record. The Board has held that duplicative and cumulative of information already in the record and considered by the Office has no evidentiary value.[6] Furthermore, a physician's assistant is not a physician as defined under the Act and, therefore, reports submitted by Dr. Steinmann's assistant in this case do not constitute competent medical evidence.[7]

The underlying issue in the claim is essentially medical in nature, *i.e.*, whether appellant was totally disabled for 300 intermittent hours from September 29, 1999 to April 4, 2001, due to her accepted work-related conditions of bilateral carpal tunnel syndrome and right third trigger finger. Appellant submitted no medical evidence which addresses the relevant issue in this claim, her disability for the specific hours claimed. She failed to raise a substantive legal question or show that the Office erroneously applied or interpreted a specific point of law. The Office properly refused to reopen appellant's claim for a review of the merits.

CONCLUSION

The Board finds that the Office properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

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[3] 20 C.F.R. § 10.606(b)(2).

[4] 20 C.F.R. § 10.607(a).

[5] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[6] *See Daniel Deparini*, 44 ECAB 657 (1993) (the Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value).

[7] 5 U.S.C. § 8101(2); *see Shelia Arbour* (*Victor E. Arbour*), 43 ECAB 779 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member