

FACTUAL HISTORY

On July 8, 1994 appellant, then a 46-year-old executive officer, filed a traumatic injury claim alleging that on June 30, 1994 he sustained a pain in his lower back when he stood up from a chair after sitting most of the day. On April 18, 1996 appellant, while at work, started to hyperventilate and develop chest pains. He stopped work at that time. The Office accepted appellant's claim for acute lumbosacral strain and somatoform disorder. Appropriate medical and disability benefits were paid.

On November 20, 1997 the Office notified appellant of its proposal to terminate his medical benefits. The Office based its proposal on the medical examinations of Dr. Charles J. Larson, a Board-certified orthopedic surgeon, and Dr. Eric E. Goranson, a Board-certified psychiatrist. Dr. Larson opined that appellant did not have a residual work-related condition related to his musculoskeletal system based on review of the records, imaging studies and his physical examination. Dr. Goranson related appellant's current psychiatric condition to his preexisting personality traits.¹ Appellant was given 30 days within which to respond to the proposed termination of benefits. This proposed termination of benefits was made final in a decision dated January 6, 1998. By letter dated January 29, 1998, appellant requested an oral hearing which was held on March 31, 1999. By decision dated July 19, 1999, the hearing representative affirmed the Office's January 6, 1998 decision. On June 25, 2000 appellant requested reconsideration. In a decision dated October 5, 2000, the Office reviewed appellant's claim on the merits but denied modification.

On September 17, 2001 appellant again requested reconsideration. In his letter, appellant noted that there was still confusion as to whether he filed the appropriate claim form and argued that the Office relied on the wrong medical reports in reaching its conclusion. In support of his request for reconsideration, appellant filed a portion of Dr. Goranson's report of January 17, 1997, an ambulance report dated April 18, 1996, a June 17, 1996 occupational health/mental health evaluation from Kaiser Permanente, Dr. Quan's October 16, 1996 report, copies of a recurrence claim filed on April 29, 1996, a February 13, 1997 statement by Richard G. Wasill with regard to appellant's continuation of pay, and a new claim for occupational disease dated September 17, 2001. By decision dated November 9, 2001, the Office denied appellant's request for reconsideration without conducting a merit review. The Office determined that the new evidence was insufficient to warrant review of the case on its merits under 5 U.S.C. § 8128.

¹ Other medical evidence of record included the report of appellant's treating Board-certified family practitioner, Dr. Timothy J. Craven, who opined that appellant continued to have symptoms related to the work injury, specifically chronic right sacroiliac strain and chronic depression related to back pain. On August 28, 1996 the Office referred appellant for a second opinion to Dr. Clyde E. Hunt, a Board-certified orthopedic surgeon, and Dr. Arlen Quan, a psychiatrist. With regard to appellant's back condition, Dr. Hunt opined that it was "highly unlikely that [appellant's] job caused whatever obscure back problem he has." The Office referred appellant to Dr. Larson to resolve the conflict between Dr. Craven's opinion and Dr. Hunt's opinion as to whether appellant had any residuals from his accepted working injury with respect to his back. With regard to appellant's psychiatric condition, Dr. Quan inferred that appellant's psychiatric condition should be considered related to his back condition. However, because Dr. Quan was unable to explain how appellant's adjustment disorder was related to his back strains, the Office referred appellant to Dr. Goranson for another second opinion.

LEGAL PRECEDENT

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review of the merits of the claim.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.⁴

ANALYSIS

In support of his claim for reconsideration, appellant submitted a copy of an April 18, 1996 ambulance report, a portion of Dr. Goranson's January 17, 1997 report, a June 17, 1996 occupational health/mental health evaluation from Kaiser Permanente, Dr. Quan's October 16, 1996 report, copies of a recurrence claim filed April 29, 1996 and a February 13, 1997 statement by Mr. Wasill. These items were all previously considered by the Office and, therefore, are duplicative of evidence already of record. As such, this evidence is insufficient to warrant further merit review. The Board further notes that the CA-2a form dated April 29, 1996 and the February 13, 1997 statement of Mr. Wasill do not pertain to the medical issue at hand. Appellant also filed a claim on the same date he requested reconsideration. This claim is also irrelevant to the issue of reconsideration. Further, the Board notes that the claim form is not complete. The Office properly noted that appellant had not raised any substantive legal questions nor included any new and relevant evidence and, therefore, appellant's request did not constitute a basis for reopening a case.⁵

CONCLUSION

As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen appellant's claim for review of the merits.

² 20 C.F.R. § 10.606(b)(2); *see also* *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

³ 20 C.F.R. § 10.608(b).

⁴ *Edward W. Malaniak*, 51 ECAB 279, 283 (2000).

⁵ *See James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2001 is hereby affirmed.

Issued: June 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member