



Appellant submitted diagnostic test results and an April 4, 2000 report from Dr. Kenneth P. Burres, a Board-certified neurological surgeon and treating physician, who performed a left L4-5, L5-S1 microlaser discectomy, an exit foraminotomy L4-5, L5-S1, left and partial corpectomy L4-5, left and a resection of osteophytes at L4-5, L5-S1, on the left. In a December 8, 2000 report, Dr. Burres advised that he underwent lumbar surgery with good results. He indicated that appellant was only capable of lifting five pounds.

On February 28, 2001 appellant returned to limited duty.

In a May 10, 2001 disability certificate, Dr. Celedonio A. Fernando, a Board-certified neurosurgeon, diagnosed lumbosacral disc disease and indicated that appellant had worsened post surgery with low back and neck pain. He advised that he was disabled from May 10 to July 10, 2001. Appellant also continued submitting reports of diagnostic testing.

By letter dated July 2, 2001, the Office advised appellant that it had received his CA-7 claiming compensation from April 16 to 19, 2001. The Office advised him that he must submit a medical report supporting disability for that period.

By decision dated September 25, 2001, the Office denied appellant's claim for compensation for the period April 8, 2000 through April 16, 2001. The Office noted that there were no medical reports prior to or subsequent to his April 2000 back surgery causally relating the surgery to the accepted condition. The Office further noted that the evidence was insufficient to support that any disability due to the April 4, 2000 back surgery was causally related to the accepted back strain.

By letter dated October 21, 2001, appellant requested a hearing, which was held on May 22, 2002. He submitted reports from Dr. Fernando noting that he remained symptomatic in the cervical and lumbosacral spine and that he was disabled. In a July 10, 2001 report, Dr. Fernando stated that appellant's lumbar symptoms had worsened since his surgery. He also noted that his opinion was based on appellant's belief that his symptoms were a result of his being a mailman and carrying heavy loads of mail.

Appellant's representative also submitted a statement in which he described the circumstances of which he believed contributed to his condition. He also referred to the reports submitted by Dr. Burres and alleged that appellant's claim should be accepted.

The Office also received reports from Dr. Burres dating from March 27 to July 19, 2000, a copy of a February 22, 2000 magnetic resonances imaging (MRI) scan of the lumbar spine from Dr. Kumar. Appellant also submitted an August 23, 2000 report in which Dr. Burres diagnosed lumbar disc disease and described his work as a mail carrier, which included lifting heavy objects and advised that this caused additional pain and discomfort. Although he had seen him repeatedly throughout the year, appellant continued to voice discomfort in the low back, despite the sciatic discomfort being alleviated. Dr. Burres recommended a return to work with restrictions, including light office duty for three months with no lifting over five pounds for a period of three months. Appellant also submitted copies of prior MRI scans.

On August 16, 2001 appellant filed a CA-7 claim for disability from May 10 to August 7, 2001.

By decision dated June 18, 2002, the Office hearing representative affirmed the Office's September 25, 2001 decision. The Office hearing representative found that the evidence did not establish that appellant's herniated disc and resulting surgery and disability were caused by his accepted employment injury. The Office hearing representative advised that there was no medical evidence which contained a rationalized opinion causally relating the herniated disc and resulting surgery to factors of his employment.

Appellant submitted evidence, including a June 10, 2002 electrodiagnostic report diagnosing left L5 radiculopathy and right S1 radiculopathy based on prolongation of right H-reflex by 1.2 milliseconds. Dr. Fernando provided disability certificates which repeated his diagnoses and advised that he was disabled from July 8, 2000 to January 14, 2003.

By letter dated June 18, 2003, appellant requested reconsideration. His representative alleged that the issue was whether he was disabled from April 8, 2000 to April 16, 2001 due to a disability causally related to the work injury of February 14, 2000. She also alleged that the Office did not address appellant's claim for a herniated disc and the subsequent surgery which was supported by the medical evidence. In a June 2, 2003 report, Dr. Anselmo Pineda, a Board-certified neurological surgeon, indicated that he was seen for complaints of low back pain and pain in the cervical region and left shoulder. He advised that appellant had severe recurrent back pain with radiculopathy of the left leg, such that he was totally disabled. Dr. Pineda recommended physical therapy.

By decision dated September 17, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant a merit review.<sup>1</sup>

In a September 24, 2003 MRI scan of the lumbar spine, Dr. Danica H. Holt advised that at L4-5, there was evidence of a left laminotomy with extensive enhancing granulation tissue circling the left L5 nerve root. He also advised that there was a three to four millimeter left paracentral disc protrusion with surrounding enhancing granulation tissue causing a left lateral recess narrowing and left greater than right foraminal narrowing as well as facet hypertrophy. Dr. Holt noted that at L5-S1 there was also enhancing granulation tissue encircling the left S1 nerve root as well as a three millimeter broad based disc bulge and left neural foraminal narrowing. He indicated that at L3-4, there was less than a two millimeter annular bulge.

In a September 29, 2003 MRI scan of the cervical spine, Dr. Holt noted that at C3-4, there was mild bilateral foraminal narrowing, greater on the left and a less than two millimeter annular bulge and mild facet hypertrophy at C4-5. Furthermore, he advised that at C5-6 there was left greater than right foraminal narrowing caused by a two millimeter disc bulge as well as

---

<sup>1</sup> Appellant appealed this decision to the Board. However, in transmitting the case record to the Board, the Office did not include a copy of the September 17, 2003 decision. By decision dated April 28, 2004, the Board dismissed the appeal for lack of jurisdiction. Docket No. 04-573 (issued April 28, 2004). Upon return of the record to the Office, a copy of the September 17, 2003 Office decision was associated with the record.

mild posterior uncovertebral hypertrophy and facet hypertrophy, with mild facet hypertrophy at C6-7.

By decision dated February 7, 2005, the Office again denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

### **ANALYSIS**

In the instant case, appellant disagreed with the denial of his claim for a herniated disc surgery and compensation for disability from April 8, 2000 to April 16, 2001 and requested reconsideration.

The underlying issue is medical in nature, whether appellant's herniated disc surgery compensation for disability from April 8, 2000 to April 16, 2001 are related to the accepted employment injury or factors of his employment. However, he did not provide any relevant or pertinent new evidence to the issue of whether his herniated disc and resulting surgery and disability were due to his accepted employment-related back strain or factors of his employment.

On reconsideration appellant's representative alleged that he was disabled from April 8, 2000 to April 16, 2001 due to a disability causally related to the on-the-job injury of February 14, 2000. She also alleged that the Office did not address his claim for a herniated disc

---

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> 20 C.F.R. § 10.608(b).

and the subsequent surgery which was supported by the medical evidence. In addition, counsel referred to previously submitted reports and to appellant's statements that he believed that his claim was related to factors of his employment. However, these arguments and the evidence on which they were based were previously considered by the Office. 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.<sup>5</sup>

Appellant did submit a report dated June 2, 2003 from Dr. Pineda, but it is not relevant as he did not provide any opinion that his herniated disc and the resulting surgery and period of disability were causally related to the accepted employment injury. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup> Thus, this report is insufficient to require the Office to reopen his case for further review of the merits.

Appellant also submitted several diagnostic reports dated June 10, 2002, September 24, and 29, 2003. However, these reports merely reported findings and are not relevant and pertinent new evidence as they did not contain an opinion regarding whether his claim for a herniated disc and the resulting surgery along with the claimed period of disability were related to appellant's accepted employment condition.

Dr. Fernando provided disability certificates and repeated his prior diagnoses and advised that appellant was disabled from July 8, 2000 to January 14, 2003. However, these reports were not new or relevant. Appellant also submitted copies of documents that were previously submitted. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>7</sup>

Appellant did not provide any relevant and pertinent new medical evidence supporting that his herniated disc, surgery or claimed disability were related to his accepted employment injury. Furthermore, he did not show that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied appellant's request for reconsideration without conducting a merit review.

### **CONCLUSION**

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

---

<sup>5</sup> *Freddie Mosley*, 54 ECAB \_\_\_\_ (Docket No. 02-1915, issued December 19, 2002).

<sup>6</sup> *Freddie Mosley*, *supra* note 5; *Pearl Lewis (Walter H. Lewis)*, 54 ECAB \_\_\_\_ (Docket No. 02-856, issued March 26, 2003); *Jacqueline E. Brown*, 54 ECAB \_\_\_\_ (Docket No. 02-284, issued May 16, 2003).

<sup>7</sup> *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs February 7, 2005 is affirmed.

Issued: October 7, 2005  
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