United States Department of Labor
Employees' Compensation Appeals Board

ELLEN M. LEE, Appellant	)	
and	)	**Docket No. 05-1567**
	)	**Issued: October 14, 2005**
SOCIAL SECURITY ADMINISTRATION, Richmond, CA, Employer	)	

Appearances:
Ellen M. Lee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 22, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated July 5, 2005 which denied merit review. Because more than one year has elapsed between the last merit decision of the Office dated June 8, 2004 and the filing of this appeal on July 22, 2005, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 13, 2003 appellant, then a 56-year-old claims authorizer, filed an occupational disease claim alleging that keying and moving her neck at the computer caused her sore neck and arms. She stated that this was exacerbated by a broken chair. In a report dated March 6, 2003,

Dr. David M. Schiff, an attending Board-certified orthopedic surgeon, diagnosed cervical degenerative disease and advised that she needed a new chair and a telephone headset.

By letter dated April 1, 2003, the Office informed appellant of the type evidence needed to support her claim. In an April 8, 2003 response, she stated that with keying and answering the telephone, she moved her head from side to side and, because her chair was broken and would slowly sink, she also moved her head up and down which caused pain that radiated into her arms and hands. She was also required to lift claims files and noted that 90 percent of her job duties were at the computer and 10 percent on the telephone with 95 percent of her job performed sitting.

In a decision dated March 27, 2003, the Office denied the claim, finding that the medical evidence did not establish that work factors caused the claimed condition.

On June 2, 2003 appellant requested reconsideration and submitted additional reports from Dr. Schiff, including a March 3, 2003 note which diagnosed multilevel degenerative disc disease, cervical radiculitis and foraminal encroachment, left greater than right. He advised that she should not wear bifocals at the computer. On April 1, 2003 the physician reviewed a magnetic resonance imaging scan. In reports dated May 27 and 30, 2003, he advised that appellant could not work from February 27 to July 7, 2003, diagnosed multilevel degenerative disc disease and opined that this was caused by employment because she was required to pinch the fold between her neck and shoulder and noted that her chair would drop. In a decision dated August 21, 2003, the Office denied modification of the March 27, 2003 decision.

Appellant again requested reconsideration and submitted a September 18, 2003 report in which Dr. Schiff updated her condition. By decision dated January 4, 2004, the Office denied modification of the August 21, 2003 decision.

On March 23, 2004 appellant again requested reconsideration and submitted a report dated February 11, 2004 in which Dr. Edward C. Hughes, Jr., a Board-certified orthopedic surgeon, provided a diagnosis of herniated disc at L5-S1 with degenerative disc disease. In a February 12, 2004 report, Dr. Schiff noted the arthritic change in appellant's neck and opined that this was aggravated and made worse by her faulty chair because she chronically hyperextended. In a June 8, 2004 decision, the Office denied modification of the March 23, 2004 decision.

On June 8, 2005 appellant requested reconsideration and submitted additional evidence, including duplicates of Dr. Schiff's September 18, 2003 and February 12, 2004 reports, a computer-generated article on disc rupture with a definition of hyperextension, and a disability slip dated August 26, 2003 signed by someone on Dr. Schiff's staff stating that appellant was incapacitated due to nerve pain from her neck. By decision dated July 5, 2005, the Office denied appellant's reconsideration request, finding the evidence submitted either duplicative or immaterial.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[1] vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[2] Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[3] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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 Office.[4] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

ANALYSIS

The only Office decision before the Board in this appeal is that dated July 5, 2005, denying appellant's request for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated June 8, 2004, and the filing of her appeal with the Board on July 22, 2005, the Board lacks jurisdiction to review the merits of her claim.[6]

With the June 8, 2005 reconsideration request, appellant submitted no new argument. She did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[7]

With respect to the third requirement under section 10.606(b)(2), while appellant submitted additional evidence, the reports were duplicates of those from Dr. Schiff previously reviewed by the Office. The Board has long held that evidence that repeats or duplicates that already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] The additional evidence submitted by appellant does not contain findings relevant to

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.608(a).

[4] 20 C.F.R. § 10.608(b)(1) and (2).

[5] 20 C.F.R. § 10.608(b).

[6] 20 C.F.R. § 501.3(d)(2).

[7] 20 C.F.R. § 10.606(b)(2).

[8] *James A. Castagno*, 53 ECAB 782 (2002); *Eugene F. Butler*, 36 ECAB 393 (1984).

whether her neck condition was caused by employment. The August 26, 2003 disability slip is not signed by a physician and is thus not considered medical evidence under the Act.[9] Regarding the computer generated article, newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[10] Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 5, 2005 be affirmed.

Issued: October 14, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *See e.g. Ricky S. Storms*, 52 ECAB 349 (2001).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).