United States Department of Labor
Employees' Compensation Appeals Board

A.V., Appellant	)	
and	)	**Docket No. 06-1349**
	)	**Issued: October 27, 2006**
DEPARTMENT OF THE INTERIOR, CANYONLANDS NATIONAL PARK, Moab, UT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 18, 2006 appellant filed a timely appeal from a February 15, 2006 nonmerit decision denying her request for reconsideration of a February 7, 2005 decision affirming the denial of her claim. The Board's jurisdiction to consider and decide appeals from final decisions of the Office of Workers' Compensation Programs extends only to those decisions issued within one year prior to the filing of the appeal.[1] Since the most recent merit decision was dated February 7, 2005, the Board lacks jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[1] 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

[2] *Id.*; *see Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

FACTUAL HISTORY

On July 14, 2001 appellant, then a 29-year-old park ranger, filed a traumatic injury claim for compensation. On July 5, 2001 she injured her right knee when she stepped off a rock onto sand which collapsed and her knee struck one of the rocks. There is no indication that appellant lost time from work as a result of her injury.

In an August 1, 2002 Form CA-20 and treatment note, Dr. Steven Rouzer, a Board-certified family practitioner, indicated that appellant was injured on July 5, 2001 when she fell on her flexed right knee. The examination revealed a tender right lateral menisci. Dr. Rouzer stated that it seemed possible that appellant had a lateral menisci injury. He provided a diagnosis of a questionable right lateral meniscus which he indicated with a check mark in the appropriate box was causally related to her employment activity. Dr. Rouzer recommended x-rays and an evaluation by an orthopedic surgeon.

In a letter dated September 16, 2002, the Office advised appellant that additional evidence was needed to make a determination of whether she was eligible for benefits under the Federal Employees' Compensation Act. Appellant was instructed to provide additional factual and medical evidence, including a comprehensive medical report from her treating physician which contained a history of injury, examining findings, test results, diagnosis (with ICD-9 diagnosis code), treatment provided, prognosis, period and extent of disability and an opinion on the relationship of the diagnosed condition(s) to her federal employment activity.

In a September 26, 2002 letter, appellant responded to the Office's questions. She submitted an August 1, 2002 x-ray report, which noted the right knee was unremarkable.

By decision dated November 8, 2002, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that the incident of July 5, 2001 occurred as alleged but that the medical evidence did not establish that she had a diagnosed medical condition related to the accepted event.

Appellant disagreed with the Office's decision and requested a hearing, which was held on August 13, 2003. Medical evidence from Dr. Steven J. Heil, a Board-certified orthopedic surgeon, was received together with an August 18, 2003 note from appellant's physical therapist countersigned by Dr. Heil.

By decision dated October 28, 2003, an Office hearing representative affirmed the November 8, 2002 decision. He found that the record contained no medical evidence which included a physician's rationalized opinion that appellant's right knee condition was causally related to the accepted work incident of July 5, 2001.

On September 29, 2004 appellant requested reconsideration. She submitted a timeline of events, miscellaneous correspondence from the employing establishment, a video tape showing where injury occurred and a November 24, 2003 report from Dr. Heil.

By decision dated February 7, 2005, the Office denied modification of the October 28, 2003 decision. The Office found that Dr. Heil's November 24, 2003 report did not constitute a

well-rationalized opinion as his explanation of the diagnosis was not supported by physical/objective findings.

On January 23, 2006 appellant requested reconsideration. In a January 9, 2006 letter, she reiterated her history of injury and advised that she was diagnosed with ilio-tibial band syndrome by an orthopedic physician and treated by a physical therapist with positive results. She noted that the Office denied her claim in February 2005 because "Dr. Heil did not provide the objective findings to support his diagnosis," and "Subjective complaints are not covered under the Act." Based upon her training and experience as an emergency medical technician, she understood what objective findings were and contended that the medical evidence supported objective findings of her injury. In a "patient care record," written by appellant, she listed her subjective and objective findings along with her assessment of injury, which she determined was a crushing injury, with obvious bruising and swelling, possible broken bones, and/or possible damaged ligaments or tendons. Appellant submitted duplicative copies of evidence already of record.

By decision dated February 15, 2006, the Office found the January 23, 2006 request for reconsideration insufficient to warrant further merit review. Her request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of the Act,[3] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[4] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

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

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.[5] Evidence that repeats or duplicates

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b).

[5] 20 C.F.R. § 10.608(b).

evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6]

ANALYSIS

Appellant's January 23, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. She argued that the medical evidence of record contained objective findings of her injury. The underlying issue is whether appellant established a right knee injury causally related to the accepted July 5, 2001 work incident. In its February 7, 2005 decision, the Office denied her claim on the basis that there was insufficient rationalized medical opinion on the issue of whether a causal relationship existed between the claimant's diagnosed condition and the July 5, 2001 work incident. Appellant's argument does not show that the Office erroneously applied or interpreted a specific point of law, nor does it constitute a relevant legal argument not previously considered by the Office.[7] Consequently, she 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant indicated that she had supplied medical evidence supporting her claim. With the exception of the document entitled "patient care record," appellant's request was accompanied by evidence previously of record. 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.[8] The "patient care record" authored by appellant in her capacity as an emergency medical technician, although new, is not considered medical evidence. An emergency medical technician is not a "physician" as defined under the Act.[9] Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

The Board finds that appellant did not show that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office, nor did she submit relevant and pertinent evidence not previously considered by the Office. Consequently, appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2).

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[6] *See Manuel Gill*, 52 ECAB 282 (2001); *Eugene F. Butler*, 36 ECAB 393 (1984).

[7] To require that the Office reopen the case for a merit review, the legal contention on reconsideration must have a reasonable color of validity. *Constance G. Mills*, 40 ECAB 317 (1988). In light of appellant's burden of proof to establish the essential elements of her claim, the Board concludes that her legal contention has no reasonable color of validity.

[8] *See Manuel Gill*, 52 ECAB 282 (2001); *Eugene F. Butler*, 36 ECAB 393 (1984).

[9] 5 U.S.C. § 8101(2) of the Act provides in pertinent part as follows: (2) "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 15, 2006 is affirmed.

Issued: October 27, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board