United States Department of Labor
Employees' Compensation Appeals Board

Z.S., Appellant	)	
and	)	**Docket No. 06-1248**
	)	**Issued: January 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Troy, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2006 appellant filed a timely appeal of a nonmerit decision by the Office of Workers' Compensation Programs dated February 3, 2006 denying her request for reconsideration of the Office decisions terminating her benefits. As the most recent Office merit decision was issued on January 14, 2005, more than one year before the filing of this appeal, the Board does not have jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

On June 3, 2003 appellant, then a 43-year-old mail processing clerk, filed a traumatic injury claim alleging that on May 28, 2003 she sustained injuries when a bundle of mail thrown

by a coworker hit her right hand. On July 14, 2003 the Office accepted appellant's claim for a sprain/contusion in both her right hand and right wrist.

By letter dated October 29, 2003, the Office referred appellant to Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a medical report dated November 12, 2003, Dr. Pollak examined appellant and noted: "There are no objective or consistent subjective findings that would indicate a currently disabling pathological condition. There is no sign of tend[i]nitis." He then concluded that it did not appear that appellant's previously diagnosed sprained contusion or tendinitis was presently active, and that she could resume her normal job duties without limitations.

Based on the report of Dr. Pollak on December 10, 2003, the Office issued a notice of proposed termination of compensation and medical benefits. By decision dated January 15, 2004, the Office finalized the termination of compensation and medical benefits.

By letter dated November 9, 2004, appellant requested reconsideration and submitted new medical evidence, including, *inter alia*, reports by Dr. Paul S. Shapiro, a Board-certified orthopedic surgeon, dated June 22 and October 20, 2004. Dr. Shapiro indicated in his June 22, 2004 report that appellant told him that she had problems with her right wrist which commenced when she was hit with a large bundle of mail on May 28, 2003. He further indicated that he treated appellant from June 22 to October 20, 2004 for persistent chronic right wrist pain and gave her cortisone injections.

Appellant also submitted medical reports by Dr. Matthew L. McGee, a Board-certified physiatrist, dated June 22 to October 20, 2004. These reports indicate that Dr. McGee treated appellant for a ganglion over the dorsum of the right wrist which first started bothering appellant in April 2004. Appellant also submitted duty status reports by Dr. McGee dated June 30 and October 28, 2004. In both of these reports Dr. McGee lists his clinical findings as tendinitis in the right hand and a ganglion cyst in the right wrist. Dr. McGee used a check mark to indicate that he found these injuries consistent with appellant's history of injury, *i.e.*, that a small bundle struck appellant's right wrist.

By decision dated January 14, 2005, the Office reviewed appellant's claim on the merits but denied modification as it determined that the weight of the medical evidence was represented by the detailed and rationalized medical report of Dr. Pollak negating the existence of any disabling residuals from appellant's accepted employment injury.

By letter dated January 6, 2006, appellant again requested reconsideration. In support thereof, appellant submitted a September 23, 2005 occupational therapy report and a January 4, 2006 duty status report by Dr. McGee. Appellant also submitted additional reports by Dr. Shapiro dated April 7, September 20 and October 27, 2005 noting appellant's continuing treatment for wrist pain. In his October 27, 2005 report, Dr. Shapiro indicated that, as stated in his initial note, it was likely that appellant's wrist problems were related to her work injury as she had no problems with her wrist before being hit by a seven-pound bundle of mail on May 28, 2003.

By decision dated February 3, 2006, the Office denied appellant's request for reconsideration without reviewing the case on the merits. The Office found that the evidence submitted was cumulative, repetitious or immaterial and consequently not sufficient to warrant a review of the prior decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--
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> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

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) submitting relevant and pertinent evidence not previously considered by the Office.[1] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[2]

ANALYSIS

Appellant did not submit any new relevant legal argument nor did she allege that the Office erroneously applied or interpreted a specific point of law. With regard to the third requirement, submitted relevant and pertinent new evidence not previously considered by the Office, the Board finds that, although appellant did submit new evidence, this evidence is not sufficient to warrant merit review.

Material which is cumulative or duplicative of reports and documents already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening the case.[3] The Board finds that the January 4, 2006 duty status report by Dr. McGee constituted cumulative evidence[4] and that the occupational therapy notes were immaterial.[5]

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[1] 20 C.F.R. § 10.606(b)(2).

[2] 20 C.F.R. § 10.608(b).

[3] *Daniel M. Dupor*, 51 ECAB 482 (2000).

[4] *Freddie Mosley*, 54 ECAB 255 (2002) (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).

[5] *See Linda L. Sprague*, 48 ECAB 386 (1997).

Dr. McGee's reports of June 30 and October 28, 2004 link appellant's tendinitis in the right hand and ganglion cyst in the right wrist to the established factor of employment. However, these reports are not sufficient to require merit review of the case. Dr. McGee's report is irrelevant in that it does not address whether appellant's sprain or contusion in her right hand and wrist were causally related to the employment incident, the only injuries accepted by the Office.[6]

The Board also finds that the medical notes by Dr. Shapiro dated April 7, September 20 and October 27, 2005 are cumulative of evidence already in the record. When making his statement in his October 27, 2005 note regarding appellant being hit in the wrist with a bundle of mail, Dr. Shapiro pointed out that in his initial note of June 22, 2004 he stated that appellant had no problems with her wrist prior to this incident. As Dr. Shapiro did not add anything different than previously reported, the Board finds that the new reports are cumulative of evidence already in the record. Thus, they are insufficient to require merit review of the case.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2006 is affirmed.

Issued: January 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[6] *Patricia G. Aiken*, 57 ECAB ____ (Docket No. 06-75, issued February 12, 2004) (submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case).