United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
	)	
and	)	**Docket No. 06-1724**
	)	**Issued: January 10, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant timely appealed nonmerit decisions dated December 13, 2005, January 9 and July 11, 2006 of the Office of Workers' Compensation Programs denying his requests for reconsideration. The most recent merit decision of June 17, 2005 affirmed the termination of his monetary compensation under section 8106(c)(2) of the Federal Employees' Compensation Act. Because more than one year has elapsed between the last merit decision dated June 17, 2005 and the filing of this appeal, the Board lacks 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 requests for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 30, 2003 appellant, then a 48-year-old letter carrier, filed a Form CA-2, occupational disease claim, for a bilateral thumb complaint which he attributed to repetitive work

activities. The Office accepted his claim for basal joint osteoarthritis of both thumbs and paid appropriate compensation benefits, including an April 28, 2003 right thumb surgery. Appellant stopped working on April 28, 2003 and has not returned. He was placed on the periodic compensation rolls. Appellant has another claim, file number 160327715, which the Office accepted for bilateral carpal tunnel syndrome and tenosynovitis of the bilateral wrists/hands.

In a report dated December 23, 2003, Dr. Farooq Selod, a Board-certified orthopedic surgeon and Office referral physician, opined that appellant had basal joint osteoarthritis in both thumbs but was able to return to regular-duty work with no restrictions after three to six weeks of rehabilitation.

On March 4, 2004 the employing establishment offered appellant a modified letter carrier position of casing and carrying mail.[1]

In a March 26, 2004 report, Dr. Robert G. Ranelle, an orthopedic surgeon, noted that appellant retired on September 2, 2003. He advised that appellant had reached maximum medical improvement and found "no reason why appellant could not return to work." In a March 29, 2004 work capacity evaluation, Dr. Ranelle advised that appellant was not capable of performing his regular letter carrier job but was able to work a modified assignment for eight hours a day with restrictions.

On April 23, 2004 the employing establishment offered appellant a position as a modified city carrier. The duties included: answer telephone with headset, watch the back dock, and answer the dutch door and relate information to another employee for further assistance. The physical requirements of the position required sitting, standing and walking intermittently within physical restrictions. On April 29, 2004 appellant declined the April 23, 2004 job offer. He advised that he was accepting medical retirement from the employing establishment, which was previously approved.

On May 3, 2004 a telephone conference was conducted regarding the suitability of the position offered. The Office verified that on March 29, 2004 Dr. Ranelle had released appellant to return to work eight hours a day with restrictions. During the conference, appellant reiterated his intention to retire rather than accept the modified position.

In a letter dated May 3, 2004, the Office advised appellant that the April 23, 2004 position was suitable to his work restrictions. It afforded appellant 30 days within which to accept the position without penalty or provide reasons as to why the position was not suitable. In a May 12, 2004 letter, appellant declined the job offered for the reason his attendance in such a position would suffer because of his continuing problems in his arms, hands, escalating bronchitis and health problems related to his military service. He advised the Office of his intention to accept medical retirement. Appellant also submitted a May 12, 2004 election of benefits form indicating that he was electing retirement benefits immediately.

[1] This job offer was eventually replaced by the April 23, 2004 modified assignment.

In a letter dated June 2, 2004, the Office advised appellant that his reasons for declining the modified-duty job offer were not valid. Appellant was afforded another 15 days within which to accept the modified-duty assignment. He did not respond.

By decision dated June 17, 2004, the Office terminated appellant's entitlement to monetary compensation on the basis that he refused an offer of suitable employment. A June 10, 2004 election of benefits form indicated that appellant elected retirement benefits effective June 17, 2004.

In a July 12, 2004 letter, appellant disagreed with the Office's decision and requested an oral argument, which was held on March 23, 2005. He submitted a June 9, 2004 letter and a June 9, 2004 medical report from Dr. Ranelle who advised that appellant was unable to return to work. Dr. Ranelle explained that appellant's multiple surgeries to both of his upper extremities left him with lost motion, sensation and strength. He opined that appellant's arms would not allow him to return to his usual and customary employment and that he did not think there was a job appellant could do with his current level of function.

In an April 7, 2005 report, Dr. Ranelle summarized appellant's medical history pertaining to both his upper extremities and thumbs. He advised that, with any type of repetitive movement, appellant developed pain, numbness and tingling along the course of his ulnar and median nerves. Dr. Ranelle opined that appellant was totally disabled and that there were no jobs he could perform without aggravating or worsening of his symptoms.

By decision dated June 17, 2005, an Office hearing representative affirmed the June 17, 2004 termination decision. The Office hearing representative found that Dr. Ranelle failed to explain why he changed his March 26, 2004 opinion that appellant could engage in gainful employment.

In a July 12, 2005 letter, appellant requested reconsideration of the June 17, 2005 decision. He noted that Dr. Ranelle found him not capable of performing his job.

In a July 5, 2005 report, Dr. Ranelle set forth objective findings pertaining to appellant's wrists, hands and elbows and stated that appellant was unable to lift heavy objects and could not perform continuous repetitive tasks. He stated, "when you sum up the problems with this gentleman, he has difficulty as far as pain, numbness and tingling when he attempts to use his upper extremities. Appellant cannot perform fine motor movements and he cannot perform repetitive movements because of these nerve problems." He explained that his opinion on appellant's ability to work changed because appellant's symptoms worsened and he regressed clinically such that he was unable to perform those activities. Dr. Ranelle opined that appellant was unable to seek gainful employment because he did not think appellant's nerves were going to improve.

By decision dated December 13, 2005, the Office denied appellant's request for reconsideration without reviewing the merits of the case. The Office found that Dr. Ranelle's opinion regarding appellant's ability to work was not based on a review of the modified-duty position description and, thus, was cumulative and repetitive of information already submitted.

In a December 17, 2005 letter, appellant requested reconsideration of the Office's decision. He stated that he would like to submit evidence from the Veterans Administration which declared him unemployable. Appellant argued that the modified position involved repetitive and fine manipulation of motor skills. He stated that answering a telephone with a headset involved repetitively pushing of buttons with his fingers, writing messages and taking down badge numbers, which he was not able to do. Appellant stated that answering the dutch door involved unlocking the door each time, which was a repetitive motion using fine motor skills. A copy of Dr. Ranelle's July 5, 2005 letter was enclosed. No new medical evidence was submitted.

By decision dated January 9, 2006, the Office denied appellant's request for reconsideration without further merit review.

In a January 16, 2006 letter, appellant requested reconsideration. In an April 3, 2006 report, Dr. Ranelle reiterated his opinion that appellant was unable to work and had been unable to work since 2003. He stated that appellant's physical examination revealed persistent numbness, tingling and pain in both hands. Appellant stated that his activities were limited by his ability to do things with his arms. Dr. Ranelle noted that, if appellant tried to use his arms aggressively, he experienced increased pain, weakness, numbness and tingling. He indicated that appellant was a candidate for surgeries in the future. A copy of Dr. Ranelle's March 29, 2006 progress notes were attached, together with copies of his July 5, 2005 report.

By decision dated July 11, 2006, the Office denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

The Act[2] provides that the Office may review an award for or against compensation upon application by an employee who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[3]

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's regulations provide that the application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4]

[2] 5 U.S.C. § 8101 *et seq*.

[3] 20 C.F.R. § 10.605.

[4] 20 C.F.R. § 10.606.

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.[5]

ANALYSIS

With his requests for reconsideration, appellant did not submit any new relevant legal argument, nor did he allege that the Office erroneously applied or interpreted a specific point of law. Appellant argued that his work restrictions would not allow him to perform the activities required by the modified-duty position. The relevant issue, however, is whether appellant properly refused an offer of suitable work. Only medical evidence can establish that the April 23, 2004 job offer is not medically suitable.[6] Appellant's lay opinion is not relevant to the medical issue in this case. Consequently, he is not entitled to a review of the merits of his claim based on the first and second requirements of section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted medical reports by Dr. Ranelle indicating that he could not maintain gainful employment because of problems with his upper extremities. In a July 5, 2005 report, Dr. Ranelle stated that appellant was unable to lift heavy objects or perform continuous repetitive tasks because of problems with his nerves when he used his upper extremities. In an April 3, 2006 report, Dr. Ranelle stated that appellant's upper extremity activities were limited because increased pain, weakness, numbness and tingling occurred when he tried to use his arms aggressively. Dr. Ranelle's opinion that appellant is unable to perform repetitive movements and his objective findings of increased pain, weakness, numbness and tingling when appellant used his upper extremities were described in previous reports of June 9, 2004 and April 7, 2005. Furthermore, Dr. Ranelle's April 7, 2005 report indicates that there are no jobs appellant could perform without aggravating or worsening his symptoms. Thus, Dr. Ranelle's additional reports are duplicative of his June 9, 2004 and April 7, 2005 opinions previously submitted and considered by the Office. The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[7] The reports do not address the issue of appellant's refusal of an offer of suitable work on April 23, 2004. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8] Therefore, these reports do not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit

[5] 5 U.S.C. §§ 8101-8193, § 8128(a). The Board has found that the imposition of the one-year limitation does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Act. *See Adell Allen (Melvin L. Allen)*, 55 ECAB 390 (2004).

[6] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[7] *John Polito*, 50 ECAB 347 (1999).

[8] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

pertinent new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's requests for reconsideration in its December 13, 2005, January 9 and July 11, 2006 decisions pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and January 9, 2006 and December 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2007
Washington, DC

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

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

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