United States Department of Labor
Employees' Compensation Appeals Board

P.S., Appellant	)	
and	)	**Docket No. 07-365**
	)	**Issued: June 7, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, 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 November 24, 2006 appellant filed a timely appeal from April 27 and October 26, 2006 nonmerit decisions of the Office of Workers' Compensation Programs denying her request for reconsideration. The most recent merit decision is the Office's February 1, 2005 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction to review the April 27 and October 26, 2006 nonmerit decisions.

ISSUE

The issue is whether the Office, in its April 27 and October 26, 2006 decisions, properly refused to reopen appellant's case for further merit review of her claim pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

This is the fourth time this case has been before the Board. On February 8, 1999 appellant, then a 43-year-old clerk, fell backwards while going down an escalator at work. The Office accepted the claim for multiple contusions and appellant received wage-loss

compensation from February 8, 1999 to July 14, 2001 when the Office terminated compensation benefits on the basis that her injury-related medical conditions had resolved. In a decision dated November 1, 2002, the Board affirmed the Office's termination of benefits finding that the weight of the medical evidence rested with the April 16, 2001 report of Dr. David M. Shenker, a Board-certified neurologist and an impartial medical specialist.[1] The Board, however, remanded the case to resolve medical conflict between Dr. Dixon F. Spivy, a Board-certified psychiatrist, and Dr. Charles Turk, a Board-certified neurologist and psychiatrist, regarding whether appellant's claimed emotional condition was causally related to the February 8, 1999 employment injury.[2] In a decision dated April 13, 2004, the Board affirmed the Office's September 5, 2003 decision which found that the weight of the medical evidence, as represented by the impartial medical examiner, Dr. Nelson Borelli, a Board-certified psychiatrist, established that appellant's emotional condition did not arise out of the February 8, 1999 employment injury.[3] In the third appeal, by decision dated October 11, 2005, the Board affirmed the Office's decisions dated August 6 and November 10, 2004 and February 1, 2005 which found that appellant did not meet her burden of proof in establishing that she had any physical or emotional condition causally related to her February 8, 1999 employment injury.[4] The complete facts of this case are set forth in the Board's November 1, 2002, April 13, 2004 and October 11, 2005 decisions and are herein incorporated by reference.

In letters received by the Office on January 27 and February 1, 2006, appellant requested reconsideration of the Office's February 1, 2005 decision. She repeated her previous allegation that Dr. Borelli, the impartial medical examiner, acted inappropriately. Appellant submitted: a copy of a report from Northwestern Memorial Hospital dated February 8, 1999 previously of record; a copy of November 18, 2004 police report also previously of record; a magazine article; an October 22, 2005 Albertsons Health screening information and consent form; and a report from Operation Diabetes dated October 24, 2005.

In a January 11, 2006 medical report, Dr. Darrell Troupe, a psychiatrist, noted the history of injury and presented his examination findings. He diagnosed appellant with schizoaffective disorder, depressed with psychosis and post-traumatic stress disorder.

In a January 24, 2006 report, Dr. Jason Smith, an osteopath and appellant's treating physician, noted the history of injury and diagnosed an Axis I delusional disorder, an Axis II histrionic personality and several Axis III diagnoses. He stated that appellant's original injuries have been self-sustaining and noted that appellant had been permanently disabled since February 1999. Dr. Smith explained that the accepted fall from the escalator and appellant's subsequent incapacity was in reality a co-morbid condition with her carpal tunnel disease. He stated that total recovery was not possible given her physical profile (a tendency to develop chronic musculoskeletal processes) coupled with the historical significance of carpal tunnel disease (in general). Dr. Smith also opined that appellant's psychiatric condition was secondary

[1] Dr. Shenker resolved the conflict of medical opinion between appellant's treating physician, Dr. Jason Smith, an osteopath, and the Office referral physician, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon.

[2] Docket No. 02-1542 (issued November 1, 2002).

[3] Docket No. 04-242 (issued April 13, 2004), *petition for recon. denied* (issued June 16, 2004).

[4] Docket No. 05-766 (issued October 11, 2005).

to the evolving nature of her current musculoskeletal symptoms, which now included rheumatic disease. He explained that appellant's physical injuries and psychiatric condition were a "precipitation" phenomena in that the originally accepted work injury caused a decomposition of an underlying psychotic mental structure. Dr. Smith stated that the combined physical injuries (blunt trauma of the dorsal/lumbar, shoulder, neck and head along with the carpal tunnel syndrome) have continued to develop acute on chronic, chronic on chronic physiologically concentric interactions.

By decision dated April 27, 2006, the Office denied appellant's request for reconsideration finding that, the medical evidence submitted was of no evidentiary value to warrant further merit review. The Office found that, "while there are two medical reports submitted with this request, one does not have a legible signature and therefore cannot be considered to be of probative value. The other medical report is from the claimant's treating physician who is an osteopath and therefore has no probative value over a report from a medical specialist in the field of psychiatry."

In undated letters received by the Office on May 15 and September 18, 2006, appellant requested reconsideration. She reiterated her previous allegation that Dr. Borelli, the impartial medical examiner, acted inappropriately. Appellant submitted a copy of the November 18, 2004 police report, previously of record. In a January 11, 2006 note, Dr. Troupe noted appellant's complaints and requested that she be evaluated for treatment.

By decision dated October 26, 2006, the Office denied appellant's request for reconsideration finding that her letter raised no substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[5] the Office regulation provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[6] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[7] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[8]

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of

[5] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.

[6] 20 C.F.R. § 10.606(b)(2).

[7] *Id.* at § 10.607(a).

[8] *Id.* at § 10.608(b).

proof.[9] The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[10] If the Office should determine that the new evidence lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.[11]

ANALYSIS

Appellant's reconsideration requests received by the Office on January 27 and February 1, 2006 neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. In appellant's January 27 and February 1, 2006 requests for reconsideration, she alleged that Dr. Borelli, the impartial medical examiner, acted inappropriately. The evidence of file reflects that this argument had previously been addressed by the Board in its October 11, 2005 decision. Thus, appellant's argument pertaining to the Office's reliance on Dr. Borelli was previously considered and is repetitious of earlier arguments. 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).[12]

With regard to the submission of new and relevant evidence, appellant submitted a February 8, 1999 report from Northwest Memorial Hospital and a November 8, 2004 police report which were previously of record and previously considered. 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.[13] Appellant also submitted an October 24, 2005 report from Operation Diabetes, an October 22, 2005 screening information and consent form from Albertsons Health and a magazine article. However, the underlying issue is medical in nature and neither of these submissions offered an opinion from a physician regarding the causal relationship between appellant's current conditions and her work-related injury of February 8, 1999. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.[14]

Appellant also submitted a January 11, 2006 medical report from Dr. Troupe. The Office found that this report was of no probative value because it did not have a legible signature. While Dr. Troupe's signature is legible, the Board finds that this report, while new, fails to address the pertinent issue in this case of whether any of appellant's current conditions are

[9] *Donald T. Pippin*, 53 ECAB 631 (2003).

[10] *Id.*

[11] *See Annette Louise*, 53 ECAB 783 (2003).

[12] 20 C.F.R. § 10.608(b)(2)(i) and (ii).

[13] *Johnnie B. Causey*, 57 ECAB ___ (Docket No. 06-49, issued February 7, 2006); *Richard Yadron*, 57 ECAB ___ (Docket No. 05-1738, issued November 8, 2005).

[14] *Patricia G. Aiken*, 57 ECAB ___ (Docket No. 06-75, issued February 17, 2006); *Johnnie B. Causey*, *supra* note 13; *Bonnie A. Contreras*, 57 ECAB ___ (Docket No. 06-167, issued February 7, 2006).

causally related to her February 8, 1999 work injury. Thus, Dr. Troupe's January 11, 2006 report cannot constitute a basis for reopening the claim.[15]

Appellant also submitted a January 24, 2006 report from Dr. Smith. The Office found that this report had no probative value over a report from a medical specialist in the field of psychiatry. The issue of whether Dr. Smith is a specialist in the appropriate field would go to the weight of the medical evidence, the standard to be applied when reviewing the merits of the claim. In his report, he essentially opined that appellant's ongoing physical conditions and emotional problems were causally related to her February 8, 1999 work injury and rendered her totally disabled. Dr. Smith also offered some reasoning in support of his opinion. The record, however, does not contain a previous report from him providing medical reasoning for his opinion on causal relationship. Dr. Smith's report is relevant, pertinent and new to the issue of whether appellant's conditions are causally related to the February 8, 1999 work injury. The requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge her burden of proof. The claimant need only submit evidence that is relevant and pertinent and not previously considered.[16] As Dr. Smith's January 24, 2006 report constituted new and relevant medical evidence, the Office improperly denied appellant's request for review of the merits of the claim. The case will be remanded to the Office to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, the Office shall issue a merit decision on the claim.[17]

CONCLUSION

The Board finds that the Office improperly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[15] *Johnnie B. Causey, supra* note 13; *Bonnie A. Contreras, supra* note 14; *Patricia G. Aiken, supra* note 14.

[16] *See Donald T. Pippin, supra* note 9; *Sydney W. Anderson*, 53 ECAB 347 (2002).

[17] In view of the Board's action in this matter, it is not necessary to address whether the Office properly denied appellant's reconsideration requests that were received by the Office on May 15 and September 18, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 26 and April 27, 2006 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 7, 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