United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 07-1053**
	)	**Issued: September 14, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Huntsville, AL, Employer	)	

Appearances:
Eric F. Adams, Esq., for the appellant
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 March 8, 2007 appellant filed an appeal of a December 12, 2006 decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The most recent merit decision of record is a December 9, 2005 decision denying a period of wage-loss compensation and denying requested diagnostic testing. As this decision is more than one year old, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether the Office properly denied appellant's request for a merit review.

FACTUAL HISTORY

The Office accepted that on June 8, 2003 appellant, then a 33-year-old security screener, sustained a temporary aggravation of degenerative disc disease at C5-6 while moving luggage. Appellant was terminated from federal employment in approximately mid August 2004.

In reports dated June 9, 2003 to July 13, 2004, Dr. William S. Pennington, an attending Board-certified neurologist and psychiatrist, provided a history of injury and treatment. He diagnosed musculoskeletal back and left shoulder pain. Appellant's examination remained objectively negative.

In a September 20, 2003 report, Dr. Eston G. Norwood, an attending Board-certified neurologist and psychiatrist, stated that electromyography (EMG) and nerve conduction velocity (NCV) studies performed that day showed no abnormalities of the cervical spine or left upper extremity. He opined that there was no neurologic explanation for appellant's continued neck and left arm symptoms.

In an October 7, 2003 report, Dr. Morris B. Seymour, an attending Board-certified orthopedic surgeon, provided a history of injury and treatment. He diagnosed a possible cervical strain with radiculopathy. Dr. Seymour ordered October 13, 2003 cervical and thoracic magnetic resonance imaging (MRI) scans which showed a prominent C5-6 disc without nerve root compression.[1] In a November 13, 2003 report, he diagnosed degenerative disc disease at C5-6. Dr. Seymour opined that lifting luggage was competent to aggravate the underlying degenerative changes. He stated that any such exacerbation should resolve within 12 weeks of injury. Dr. Seymour prescribed physical therapy.[2]

In a January 8, 2004 report, Dr. Rhett B. Murray, an attending Board-certified neurosurgeon, diagnosed a left-sided cervical strain affecting the rhomboid area. In an August 3, 2004 report, Dr. Murray noted that appellant had a small disc bulge at C5-6 without nerve root impingement or cord compression. He diagnosed musculoskeletal pain without radiculopathy.

On July 29, 2004 appellant claimed wage-loss compensation for total disability for the period August 14, 2003 to October 2, 2004.

In August 2004, appellant requested authorization for cervical and thoracic myelogram. In an August 13, 2004 letter, the Office advised him of the additional evidence needed to support his request for the myelograms.

In response, appellant submitted a December 16, 2003 letter from Dr. Seymour, stating that he should undergo a myelogram prior to considering any surgical treatment as testing revealed no structural changes of the spine. In an August 19, 2004 letter, Dr. Murray explained that cervical and thoracic myelograms were necessary to rule out nerve root impingement as a cause of appellant's symptoms.

In an October 5, 2004 notice, the Office authorized the requested myelogram.

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[1] Appellant received an epidural steroid injection at C6 on October 24, 2003.

[2] Appellant also submitted physical therapy notes dated October 2003 to April 2004 signed only by a physical therapist. The reports of a physical therapist do not constitute competent medical evidence, as a physical therapist is not a physician as defined by section 8101(2) of the Act. 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000).

By decision dated October 8, 2004, the Office denied authorization of the requested myelogram on the grounds that the medical evidence did not support that the testing was related to the accepted condition.

By decision dated November 19, 2004, the Office denied appellant's claim for compensation from August 14, 2003 to October 2, 2004 on the grounds that the accepted condition had ceased, relying on Dr. Seymour's November 13 and December 16, 2003 reports. The Office also terminated appellant's monetary and medical compensation benefits effective November 19, 2004 on the grounds that his work-related condition had ceased.[3]

In a November 6, 2004 letter, appellant requested an oral hearing regarding the Office's October 8, 2004 decision denying authorization of the myelogram. He later changed his request to a review of the written record. The Office modified appellant's request to encompass a review of the written record of both the October 8 and November 19, 2004 decisions.

Appellant submitted medical billing documents and a November 9, 2004 letter regarding a discrimination complaint. He also submitted copies of evidence previously of record.

By decision dated and finalized December 9, 2005, an Office hearing representative affirmed the Office's October 8 and November 19, 2004 decisions finding that the accepted conditions had ceased and that medical evidence did not establish that the myelogram was medically necessary to treat the accepted condition. He noted that the Office authorized the myelogram prior to the October 8, 2004 denial. However, the hearing representative found that the Office's decision properly explained that "the evidence did not support the medical necessity of the recommended testing as being related to the accepted condition or due to the June 2003 work injury."

In a December 3, 2006 letter, appellant requested reconsideration. He asserted that Dr. Seymour did not render a complete diagnosis and prescribed inappropriate treatment. Appellant submitted a statement from his mother, asserting that Dr. Seymour yelled at him and refused to treat him. He also submitted a March 7, 2006 letter regarding unpaid hospital bills. Appellant also provided copies of evidence previously of record.

By decision dated December 12, 2006, the Office denied reconsideration on the grounds that appellant's December 3, 2006 request neither raised substantive legal questions nor included new and relevant evidence showing that the Office made an error of fact of law.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[4] section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law;

[3] The Board was unable to locate a pretermination notice in the record or any response that appellant may have submitted regarding such a notice.

[4] 5 U.S.C. § 8128(a).

(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.[5] Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

In support of his request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his burden of proof.[7] The claimant need only submit relevant, pertinent evidence not previously considered by the Office.[8] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[9]

ANALYSIS

The Office denied appellant's request to authorize a myelogram by decision dated October 8, 2004, finding that he submitted insufficient evidence to establish that the test was required to treat the accepted cervical condition. By decision dated November 19, 2004, the Office denied appellant's claim for compensation for the period August 14, 2003 to October 2, 2004 on the grounds that the accepted condition had ceased prior to August 14, 2003. Following a review of the written record the Office affirmed both decisions on December 9, 2005. Appellant then requested reconsideration by December 3, 2006 letter.

The underlying issues at the time of the last merit decisions in the case were whether the accepted aggravation of cervical degenerative disc disease disabled appellant from work from August 14, 2003 to October 2, 2004 or necessitated a myelogram. To be relevant, the evidence submitted in support of the December 3, 2006 request for reconsideration must address those issues.

Appellant's December 3, 2006 letter, his mother's statement and the hospital billing letter do not address the need for the requested myelogram or the claimed period of disability. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.[10] Appellant also submitted copies of evidence previously of record and considered by the Office. However, evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit

[5] 20 C.F.R. § 10.606(b)(2) (2003).

[6] 20 C.F.R. § 10.608(b) (2003).

[7] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[8] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[9] *Annette Louise*, 54 ECAB 783 (2003).

[10] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

review.[11] The duplicative nature of this evidence does not require reopening the record for further merit review.

Thus, appellant has not established that the Office improperly refused to reopen his claim for a review of the merits under section 8128(a) of the Act, because he 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 constitute relevant and pertinent new evidence not previously considered by the Office.

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 December 12, 2006 is affirmed.

Issued: September 14, 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

[11] *Denis M. Dupor*, 51 ECAB 482 (2000).