

<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

In early 1995 the Office accepted that appellant, then a 47-year-old manual distribution clerk, sustained employment-related aggravation of cervical and lumbar disc disease, aggravation of left shoulder bursitis, thoracic outlet syndrome and left shoulder impingement syndrome. He underwent authorized thoracic outlet decompression surgery in March 1996 and left shoulder decompression surgery in January 1997.

In a December 4, 2003 decision, the Office adjusted appellant's compensation effective December 6, 2003 to reflect its determination that the constructed position of cashier represented his wage-earning capacity. In reaching this determination, the Office relied on the June 9, 2003 report of Dr. Daniel K. Lee, a Board-certified neurologist who served as an Office referral physician. It found that the opinion of Dr. Wladislaw V. Ellis, an attending Board-certified neurologist, was of limited probative value regarding appellant's ability to perform the position.

In decisions dated May 12 and November 17, 2004, January 5, February 27 and April 27, 2006, the Office affirmed its December 4, 2003 decision. In connection with his periodic reconsideration requests, appellant submitted regular reports in which Dr. Ellis discussed the treatment of his neurological problems. Dr. Ellis generally indicated that he blocked appellant at various places, including the upper and lower trunks of the brachial plexi bilaterally and C7 at the cervical plexi bilaterally. He detailed appellant's various reported symptoms which included "severe neuropathic pain" in his head, neck, back, shoulders, upper arms, elbows, forearms, wrists and hands. The Office repeatedly determined that these reports were of limited probative value regarding appellant's ability to work. Appellant submitted a March 22, 2006 report in which Dr. Ellis stated that he could not perform the constructed cashier position or any other job at the employing establishment. He argued that the March 22, 2006 report of Dr. Ellis showed that he could not perform the cashier position, but the Office determined in its April 27, 2006 decision that the report was of limited probative value regarding appellant's ability to work.

In a January 10, 2007 letter, appellant requested reconsideration of his claim and argued that the March 22, 2006 report of Dr. Ellis showed that he could not perform the cashier position. He submitted numerous reports, dated between April 26, 2006 and January 9, 2007, in which Dr. Ellis discussed the treatment of his neurological problems. Dr. Ellis generally indicated that he blocked appellant at various places, including the upper and lower trunks of the brachial plexi bilaterally and C7 at the cervical plexi bilaterally. He detailed appellant's various reported symptoms which included severe neuropathic pain in his head, neck, back, shoulders, upper arms, elbows, forearms, wrists and hands.<sup>2</sup>

In a January 30, 2007 decision, the Office denied appellant's January 10, 2007 request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In a May 2, 2007 form, appellant requested reconsideration of his claim. He resubmitted a copy of his January 10, 2007 reconsideration letter. Appellant submitted numerous reports,

---

<sup>2</sup> Appellant also submitted numerous administrative documents concerning his medical treatment which were previously in the record.

dated between January 24 and June 21, 2007, in which Dr. Ellis again discussed the periodic blocking treatment of his condition and detailed his complaints of severe neuropathic pain.

In a June 29, 2007 decision, the Office denied appellant's May 2, 2007 request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>3</sup>

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that the evidence or argument submitted by 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.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.<sup>6</sup> 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.<sup>7</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained employment-related aggravation of cervical and lumbar disc disease, aggravation of left shoulder bursitis, thoracic outlet syndrome and left shoulder impingement syndrome. In a December 4, 2003 decision, it adjusted appellant's compensation effective December 6, 2003 to reflect its determination that the constructed position of cashier represented his wage-earning capacity. The Office affirmed its December 4, 2003 decision on several occasions.

In support of his January and May 2007 reconsideration requests, appellant argued that the March 22, 2006 report of Dr. Ellis, an attending Board-certified neurologist, showed that he could not perform the cashier position. However, the advancement of this argument would not require reopening of appellant's claim for merit review as he has already made this argument and the Office has already rejected it. The Board has held that the submission of evidence or

---

<sup>3</sup> Appellant submitted additional evidence after the Office's June 29, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>9</sup> Appellant submitted numerous reports dated between April 2006 and June 2007 in which Dr. Ellis discussed the treatment of his neurological problems.<sup>10</sup> He detailed appellant's various reported symptoms which included severe neuropathic pain in his head, neck, back, shoulders, upper arms, elbows, forearms, wrists and hands. The submission of these reports would not require reopening of appellant's case for merit review because appellant had previously submitted numerous similar reports of Dr. Ellis.<sup>11</sup> Appellant has not established that the Office improperly denied his request for further review of the merits of its April 27, 2006 decision under section 8128(a) of the Act, because the evidence and argument he submitted did not to 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 January and May 2007 requests for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>9</sup> See *supra* note 8 and accompanying text.

<sup>10</sup> Dr. Ellis generally indicated that he blocked appellant at various places, including the upper and lower trunks of the brachial plexi bilaterally and C7 at the cervical plexi bilaterally.

<sup>11</sup> Appellant also submitted numerous administrative documents concerning his medical treatment, but these were previously in the record.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' June 29 and January 30, 2007 decisions are affirmed.

Issued: August 13, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board