United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 08-1405**
	)	**Issued: November 10, 2008**
DEPARTMENT OF DEFENSE, NAVAL AIR STATION, Fallon, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2008 appellant filed a timely appeal from a February 28, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. The most recent merit decision of record is the Board's September 13, 2007 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction of the merits of the appeal.

ISSUE

The issue is whether the Office properly declined to reopen appellant's claim for reconsideration of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the second appeal before the Board. On June 10, 1999 appellant, then a 40-year-old meat cutter, filed an occupational disease claim for job stress due to various factors of employment. By decision dated March 9, 2004, the Office denied his claim for an emotional condition as he had not established any compensable work factors. This decision was affirmed

by an Office hearing representative in an August 3, 2005 decision. On December 8, 2006 the Office denied modification of the decisions denying appellant's claim. In a decision dated September 13, 2007, the Board failed to establish a compensable factor of employment.[1] The findings of fact and conclusions of law from the prior Board decision are hereby incorporated by reference.

On January 15, 2008 appellant requested reconsideration. He contended that the medical evidence of record established that he had sustained a work-related emotional condition. Appellant submitted a medial report by a Dr. James G. Reid dated September 5, 2007.

By decision dated February 28, 2008, the Office denied appellant's request for reconsideration without reviewing the merits of the case. It noted that the basis for the prior denial of benefits was that he failed to establish a compensable work factor. The Office noted that appellant's request for reconsideration contained no information or argument relating to that issue, but instead provided medical evidence which was not relevant to establish a compensable work factor.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[2] does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[3] It, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[4]

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[5] its 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.[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]

[1] Docket No. 07-664 (issued September 13, 2007).

[2] Appellant also submitted a report from Dr. Reid previously considered by the Office and the Board.

[3] *Id.* at. § 8128(a).

[4] *Annette Louise*, 54 ECAB 783, 789-90 (2003).

[5] 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 her own motion or on application." 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b)(2).

[7] *Id.* at § 10.607(a).

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 Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[9] and the submission of evidence or argument which does not address the underlying issue involved does not constitute a basis for reopening a case.[10]

ANALYSIS

The Office denied appellant's claim for an emotional condition for the reason that he had not established a compensable factor of employment. On reconsideration appellant submitted a September 5, 2007 report by Dr. Reid. However, the medical evidence in this first established a compensable factor of employment. This evidence does not constitute pertinent new and relevant evidence. The Board also finds that appellant did not advance a relevant legal argument not previously considered by the Office or show that the Office erroneously applied or interpreted a point of law.[11] Accordingly, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's claim for reconsideration of the merits under 5 U.S.C. § 8128(a).

[8] *Id*. at § 10.608(b).

[9] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[10] *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[11] On appeal, appellant argues that the hearing representative denied his hearing rights by failing to issue subpoenas for witnesses and documents. The Board already addressed and rejected these arguments. *Supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 28, 2008 is affirmed.

Issued: November 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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