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Y.C., Appellant)	
)	
and)	Docket No. 08-2085
)	Issued: April 7, 2009
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Birmingham, AL, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

On July 21, 2008 appellant filed a timely appeal of the decision of the Office of Workers' Compensation Programs dated June 27, 2008 which denied merit review of the June 19, 2007 decision denying her claim for a schedule award. Because more than one year has elapsed between the last merit decision dated June 19, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

The issue is whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On February 1, 1996 appellant, then a 36-year-old clerk, filed a traumatic injury claim alleging that on January 20, 1996 she sustained a dislocated elbow when she tripped and fell during the course of her federal employment. On February 20, 1996 the Office accepted her

claim for dislocation of the right elbow. The claim was later accepted for sprained right knee with arthroscopic repair. By decision dated October 23, 1996, the Office denied appellant's claim for a schedule award for impairment to her right upper extremity as there was no medical evidence supporting a ratable impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). By decision dated February 13, 1998, it denied her request for review as it was untimely filed and did not demonstrate clear evidence of error. By decision dated April 26, 1999, the Office denied appellant's claim for compensation from April 29 through May 13, 1996. On January 24, 2001 she filed a claim alleging a recurrence of her January 20, 1996 employment injury on January 3, 2001. This claim was denied in a decision dated April 24, 2001. Appellant resigned from the employing establishment on June 10, 2003.

On June 5, 2007 appellant filed another claim for a schedule award. By decision dated June 19, 2007, the Office denied her claim for a schedule award finding that she had not submitted evidence showing that she had a ratable impairment causally related to her January 20, 1996 employment injury.

By letter dated June 4, 2008, received by the Office on June 17, 2008, appellant requested reconsideration. In support thereof, she submitted a copy of an April 23, 2007 decision by the Social Security Administration. Appellant also submitted progress notes by Dr. Wallace B. Purdy, Jr., a Board-certified internist. In a November 29, 2004 note, Dr. Purdy indicated that appellant was complaining of back problems of three months' duration. In a February 20, 2005, he indicated that she continued to complain of low back pain and that her magnetic resonance imaging scan showed some degenerative changes. In a May 5, 2005 note, Dr. Purdy continued to note appellant's complaints of back pain and noted that there was no history of injury just bending and lifting at her job as a school cafeteria worker. In a July 28, 2005 note, he again indicated that there was no history of injury with regard to her back pain, just bending and lifting at job. In a September 8, 2005 note, Dr. Purdy did note the 1996 injury but stated that it was to appellant's right knee and her elbow but not back. In a September 27, 2005 note, he indicated that she was plagued with back pain every day. Largely illegible handwritten notes from Dr. Edwin L. Kelsey, a Board-certified physiatrist, dated January 17 through May 16, 2006 discuss appellant's lower back pain and pain in her right hip and buttock. Finally, appellant submitted a statement by a Dr. Gaylon dated August 22, 1997.

By decision dated June 27, 2008, the Office denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Federal Employees' Compensation 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).

considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.² 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.³ 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.⁴

ANALYSIS

In the instant case, on June 17, 2008 appellant filed a timely request for reconsideration of the Office's decision dated June 19, 2007 denying her claim for a schedule award.

In support of her request for reconsideration, appellant submitted a copy of a decision by the Social Security Administration and a statement by Dr. Rogers. Both of these items were previously submitted into evidence. Evidence which is duplicative or cumulative in nature is insufficient to warrant reopening the record for further merit review.⁵ The Board further notes that findings of other administrative agencies, such as the Social Security Administration, are not determinative of appellant's level of disability under the Federal Employees' Compensation Act. The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof and thus these decisions are not relevant with regard to appellant's claim under the Federal Employees' Compensation Act.⁶

The remaining evidence, *i.e.*, the medical reports of Drs. Purdy and Kelsey, are not relevant to the issue of appellant's entitlement to a schedule award. The Office accepted appellant's claim for dislocation of the right elbow, sprained right knee and arthroscopic repair. The reports of Drs. Purdy and Kelsey discuss appellant's back, hip and buttock. Furthermore, these reports do not link these injuries to appellant's accepted work injury; in fact, Dr. Purdy indicates that the back pain was caused by her subsequent employment as a school cafeteria worker. Finally, none of these reports make any findings with regard to degree of impairment. As appellant requested reconsideration of the decision denying her claim for a schedule and these reports are not relevant to that issue. Submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁷

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Federal Employees' Compensation Act. She did not show that the Office erroneously applied or interpreted a specific point of law, advance a

² 20 C.F.R. § 10.606(b)(2).

³ *Id.* at § 10.607(a).

⁴ *Id.* at § 10.608(b).

⁵ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁶ *Daniel Deparini*, 44 ECAB 657, 680 (1993).

⁷ *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. Accordingly, the Office properly denied merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2008 is affirmed.

Issued: April 7, 2009
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