

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.B., Appellant	)	
	)	
and	)	<b>Docket No. 09-15</b>
	)	<b>Issued: July 17, 2009</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Rancho Cucamonga, CA, Employer	)	
	)	

*Appearances:*  
*Wild Chang, Esq.*, for the appellant Oral Argument June 2, 2009  
*No appearance*, for the Director

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 24, 2008 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its June 5, 2007 decision denying appellant's traumatic injury claim. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On December 9, 2003 appellant, a 48-year-old customer service supervisor, filed a traumatic injury claim alleging that she sustained injuries to her neck, back, spine, legs and knees on November 24, 2003, while "turning from left to right" and twisting her hip and back on the

workroom floor.<sup>1</sup> By decision dated February 4, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that appellant's diagnosed conditions resulted from the accepted event. It denied modification in merit decisions dated May 24, 2006 and June 5, 2007.

Medical evidence received by the Office prior to the June 5, 2007 decision included numerous reports from appellant's treating physician, Dr. William Simpson, an orthopedic surgeon. On February 12, 2004 Dr. Simpson provided a detailed history of injury, stating that appellant injured her neck, lower back, right hip, and both knees on November 24, 2003, when her left knee twisted and "gave out" as she placed mail onto a flat. He stated that, in attempting to prevent a fall, she twisted and jerked her neck, lower back and right knee, resulting in excruciating pain in her neck, lower back, right thigh, hip and knees. Dr. Simpson diagnosed: superimposed chronic cervical and lumbar musculoligamentous sprains; cervical and lumbar disc herniations; internal derangement of the knees bilaterally; right sciatica; and right hip sprain, all of which he opined resulted from appellant's November 24, 2003 work-related incident. On May 23, 2007 he provided detailed examination findings and again recounted the history of appellant's alleged November 24, 2003 injury. Dr. Simpson stated that the injury occurred when she fell and twisted her body as she attempted to avoid a fall. He opined that appellant's forceful twisting injury resulted in: paracervical soft tissue ruptures, which led to increased fibrosis and degenerative changes; soft tissue ruptures, partial ligamentous tearing, subacromial bursitis and increased generalized swelling in the left shoulder, which led to chronic left shoulder impingement, fibrosis, and subsequent degenerative changes; microtears about the hands and wrists, resulting in chronic swelling, decreased space about the carpal tunnel, and chronic median nerve impingement; paralumbral muscle and other soft tissue partial ruptures, which led to lumbar disc rupture with subsequent soft tissue fibrosis and degenerative joint changes; sprains of the right hip muscles and tendons; and bilateral knee injuries. In addition to his previous diagnoses attributable to the November 24, 2003 work incident, Dr. Simpson added chronic impingement syndrome, left shoulder; bilateral chronic carpal tunnel syndrome; bilateral chronic de Quervain's syndrome of the wrists, chronic muscle tension contraction headaches; post-traumatic stress disorder; and depressive affective depressive disorder. He apportioned 70 percent of appellant's symptoms to her July 17, 2002 injury, and 30 percent of her symptoms to the alleged November 24, 2003 injury.

On June 4, 2008 appellant requested reconsideration of the Office's previous decisions. In support of her request, she submitted a June 4, 2008 report from Dr. Simpson, who again described the mechanism of injury, indicating that appellant's left knee twisted and "gave out," causing a severe jolt to her body, and resulting in severe pain to her neck, left shoulder, and upper and lower back. Dr. Simpson opined that appellant's neck, left shoulder, back, wrist, knee, and right hip conditions were exacerbated by the November 24, 2003 incident.

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<sup>1</sup> Appellant also sustained an injury on July 17, 2002, when she fell from a four-foot high dock at work. The Office accepted her traumatic injury claim for cervical, thoracic and lumbar strains; left wrist and bilateral knee strains; and right hip and head contusions. (File No. xxxxxx444) It terminated her medical and compensation benefits under that claim on November 21, 2003. After further development, by decision dated September 22, 2008, it expanded the claim to include aggravation of degenerative arthritis of the lumbar spine and mild disc bulging, but denied modification of its decision to terminate medical and compensation benefits relative to the right hip injury. The September 22, 2008 decision is currently on appeal before the Board.

In a June 24, 2008 nonmerit decision, the Office denied the request for reconsideration, finding that Dr. Simpson's medical report was substantially similar to material previously submitted and reviewed and, therefore, was insufficient to warrant merit review.<sup>2</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>3</sup> the Office 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>4</sup> 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.<sup>5</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>6</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

### **ANALYSIS**

Appellant's June 4, 2008 request for reconsideration 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. Consequently, appellant 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).

The Board also finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. In support of her request for reconsideration, appellant submitted a June 4, 2008 medical report from Dr. Simpson, which described the mechanism of injury. The report indicated that appellant fell on November 24, 2003, when her left knee twisted and "gave out," causing a severe jolt to her body which resulted in severe pain to her neck, left shoulder, and upper and lower back. Dr. Simpson opined that appellant's neck, left shoulder, back, wrist, knee and right hip conditions were exacerbated by the November 24, 2003 incident. However, his report merely reiterated information contained in reports previously

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<sup>2</sup> Appellant submitted additional evidence after the Office's December 5, 2007 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

received and reviewed by the Office and is, therefore, cumulative and duplicative in nature.<sup>8</sup> The Board finds that his report does not constitute relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her June 4, 2008 request for reconsideration.<sup>10</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000). The Board notes that, at the oral argument before the Board, Dr. Simpson acknowledged that his June 4, 2008 report was a reflection of his other reports.

<sup>9</sup> See *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>10</sup> On appeal, appellant's representative argued that the June 24, 2008 decision should be reversed because the Office's original denial of appellant's claim was erroneous. However, the Board does not have jurisdiction over the merits of this case and, therefore, cannot address the correctness of the Office's merit decisions. 20 C.F.R. § 501.3(d).