United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 08-2323**
	)	**Issued: June 3, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Riverbank, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 25, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated December 21, 2007 and August 6, 2008, denying her requests for reconsideration without a merit review. Because more than one year has elapsed from the last merit decision dated January 30, 2006 to 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.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without further merit review under section 8128(a).

FACTUAL HISTORY

On December 22, 2005 appellant, then a 58-year-old rural carrier, filed an occupational disease claim alleging that she sustained "female problems from lifting." She first realized that her condition was caused or aggravated by her employment in June 2004. Appellant stopped

work on November 28, 2005 and did not return. The employing establishment controverted the claim.

In a December 21, 2005 letter to the employing establishing, appellant asserted that she had surgery on November 28, 2005 as a direct result of repetitive lifting. In an accompanying November 21, 2005 disability note, Dr. John Pfeffer, a Board-certified obstetrician and gynecologist, indicated that appellant would be unable to work for eight weeks beginning November 28, 2005. On December 9, 2005 he noted that her unspecified condition "could have been caused by repetitive heavy lifting."

After the Office advised appellant of the evidence needed to establish her claim, she submitted a statement dated January 9, 2006 in which she explained that her job duties consisted of repetitive lifting up to 70 pounds a day of flats or trays of mail. Appellant noted that she underwent a hysterectomy in 2000 because of pelvic organ prolapse. In a January 3, 2006 report, Dr. Pfeffer noted that appellant's medical history included a hysterectomy in June 1999, which subsequently developed into vaginal prolapse. He advised that appellant became symptomatic with pelvic pressure and lower back discomfort. Appellant underwent surgery in November 2005 for abdominal vaginal sacropexy and Moschowitz procedure. Dr. Pfeffer advised that any repetitive maneuver that involved the Valsalva maneuver with increase in abdominal pressure may contribute to pelvic relaxation and vaginal prolapse. He recommended no physical activities requiring Valsalva maneuver or heavy lifting.

By decision dated January 30, 2006, the Office denied appellant's claim for compensation finding that the medical evidence was insufficient to establish that the claimed medical condition was related to the established work-related activities.

Appellant requested reconsideration on February 15, 2006. In a statement dated February 16, 2006, she listed the evidence she believed supported her case. Appellant also submitted reports from Dr. Pfeffer, including a November 28, 2005 surgical report noting that she underwent procedures for abdominal vaginal sacropexy, Moschowitz procedure and lysis of adhesions. On January 31, 2006 Dr. Pfeffer released appellant to limited-duty work. A February 14, 2006 report noted that appellant had a hysterectomy due to pelvic organ prolapse due to being a rural carrier and repetitive heavy lifting.

By decision dated May 24, 2006, the Office denied modification of its January 30, 2006 decision finding that the medical evidence submitted was not sufficient to accept the claimed condition as work related.

Appellant subsequently submitted a November 13, 2006 report from Dr. John Ellis, a Board-certified family practitioner, who provided a history of appellant's work activities and medical treatment. Dr. Ellis noted appellant's complaint of intermittent low back and lower abdominal pain. After examining her, he diagnosed vaginal prolapse and enterocele status postsurgery and muscle tendon unit strain of the lumbosacral spine. In a section of the report titled "cause of injury," Dr. Ellis indicated that appellant's injury and impairment arose out of her employment and was causally connected to job activities such as repetitive lifting, lifting up to 70 pounds, pushing, pulling, carrying, twisting and squatting directly caused vaginal prolapse and enterocele. He also noted that appellant's repetitive job duties also caused soft tissue injury

to her lumbosacral spine resulting in chronic sprain injuries. Appellant requested reconsideration on April 11, 2007.

By decision dated June 25, 2007, the Office denied modification of its May 24, 2006 decision, finding that the medical evidence was insufficient to establish her claim.

Appellant requested reconsideration on October 4, 2007. She submitted a September 4, 2007 report from Dr. Ellis, who reiterated that his opinion remained the same as in his November 13, 2006 report. Dr. Ellis noted that appellant's job duties required repetitive lifting up to 70 pounds, pushing, pulling, carrying, twisting and bending. He indicated that vaginal prolapse and enterocele was directly and causally related to appellant's job duties. Dr. Ellis opined that appellant's repetitive job duties caused soft tissue injury to her lumbosacral spine resulting in chronic sprain injury. He also noted that Dr. Pfeffer's reports concurred with his opinion. Appellant also submitted another copy of Dr. Ellis' November 13, 2006 report.

By decision dated December 21, 2007, the Office denied appellant's reconsideration request without a merit review finding that the evidence submitted was repetitive.

In a statement dated April 21, 2008, appellant requested reconsideration. She contended that the previously submitted medical evidence verified her diagnosis of vaginal prolapse and enterocele and chronic lumbosacral spine sprain. Appellant also asserted that Dr. Ellis' April 11, 2008 report established causal relationship.

On April 11, 2008 Dr. Ellis noted that appellant's job duties required repetitive lifting up to 70 pounds, pushing, pulling, twisting and carrying. He described the nature of her job and indicated that her duties required repetitive bending, leaning and squatting. Dr. Ellis opined that appellant's vaginal prolapse and enterocele were directly and causally related to her job duties. He further opined that her repetitive job duties also caused soft tissue injury to her lumbosacral spine resulting in chronic sprain injury. Dr. Ellis noted that, based on his November 13, 2006 report and appellant's medical history, her injury was related to her job duties. He also noted that Dr. Pfeffer had stated that appellant's injury was directly related to her job duties and that she should not be involved in physical activities requiring heavy lifting.

By decision dated August 6, 2008, the Office denied appellant's reconsideration request without further merit review finding that the evidence submitted was cumulative and repetitious.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), 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.[1] Section 10.608(b) of Office regulations provide that, when an application for reconsideration does not meet at least one of the

[1] 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007). *See* 5 U.S.C. § 8128(a).

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.[2]

ANALYSIS

In support of her October 4, 2007 reconsideration request, appellant submitted a September 4, 2007 report of Dr. Ellis. She also submitted another copy of Dr. Ellis' November 13, 2006 report.

The Board finds that the Office properly denied appellant's request for reconsideration without a merit review. Submission of Dr. Ellis' November 13, 2006 report was not a basis for a merit review as this report was previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[3]

Dr. Ellis' September 4, 2007 report, while new, is not relevant as it is repetitive of the November 13, 2006 report of record. He noted his previously stated opinion on causal relationship and did not provide any new medical reasoning for his opinion. Instead, Dr. Ellis stated that he was reiterating his previous opinion. Consequently, this report does not warrant a reopening of the claim for a merit review as it is repetitive in nature.

The Board notes that appellant's October 4, 2007 reconsideration request did not otherwise establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

In support of her April 21, 2008 reconsideration request, appellant submitted a statement asserting that the previously submitted medical evidence verified the diagnosis of vaginal prolapse, enterocele and chronic lumbosacral spine sprain. She also asserted that Dr. Ellis' April 11, 2008 report was sufficient to establish a causal relationship. Appellant's statement merely restated her belief that the evidence of record supported that her diagnosed condition was causally related to her repetitive work duties. However, the underlying issue in the case is medical in nature, which must be addressed by the submission of new and relevant medical evidence. Therefore, appellant's statement does not establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

The April 11, 2008 report of Dr. Ellis is duplicative evidence as it is repetitive of the physician's opinion contained in his November 13, 2006 report, which was previously considered by the Office. As in his September 4, 2007 report, he essentially repeated the opinion on causal relationship that was contained in the November 13, 2006 report. Dr. Ellis noted the same types of duties performed by appellant and expressed his opinion on causal relationship in the same terms as set forth in his previous report. As noted, evidence that duplicates evidence already of record is not sufficient to warrant a merit review.

[2] 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

[3] *See D.K.*, *supra* note 1. *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

Consequently, the evidence and argument submitted in support of the April 21, 2008 reconsideration request did not meet any of the three regulatory requirements needed to reopen a case for merit review under section 8128(a). The Office properly denied this request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant requests for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated August 6, 2008 and December 21, 2007 are affirmed.

Issued: June 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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