United States Department of Labor
Employees' Compensation Appeals Board

N.A., Appellant	)	
and	)	**Docket No. 09-2236**
	)	**Issued: August 12, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Bend, OR, Employer	)	

Appearances:
Ray L. Allen, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2009 appellant filed a timely appeal from a March 2, 2009 decision of the Office of Workers' Compensation Programs, which denied appellant's reconsideration request without a merit review. As the most recent merit decision of the Office was issued on January 24, 2008, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2 and 501.3.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

[1] For Office decisions dated November 19, 2008 or later, a claimant has 180 days to file an appeal with the Board. 20 C.F.R. § 501.3(e); 73 Fed. Reg. 62,190 (October 20, 2008). For Office decisions issued before November 19, 2008, a claimant had one year in which to file an appeal. *See* 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

On April 25, 2006 appellant, then a 53-year-old distribution clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome sorting mail and working on a computer while in the performance of duty. She worked about 32 hours weekly when she filed her claim. Appellant did not immediately stop work. The Office accepted appellant's claim for bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis and right trigger finger and authorized surgery, which was performed on September 13, 2006 and January 2, 2007.

On December 6, 2007 the Office advised appellant that the job offer constituted suitable work. Appellant was informed that she had 30 days to accept the position or provide reasons for refusing it; otherwise, she risked termination of her compensation benefits.

In a decision dated January 24, 2008, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

The Office continued receiving medical evidence noting appellant's status and treatment.

On January 22, 2009 appellant requested reconsideration. She submitted an undated statement received on January 27, 2009, and noted that she accepted the job offer and met with her supervisor on January 24, 2009 and agreed to start work on January 28, 2009. Appellant noted reporting for work but no accommodations had been made for her but she worked three hours as agreed. She indicated that she received her termination letter the next day. In a February 3, 2009 addendum statement, appellant noted that she accepted the job offer pursuant to the modifications set forth by Dr. David C. Stewart, a Board-certified orthopedist, and requested accommodations for her asthma condition.

Appellant submitted reports from Dr. Joel M. Depper, a Board-certified rheumatologist, dated October 5 and November 16, 2004, September 15, 2005 and May 16, 2007, physical therapy notes from October 9, 2006 to January 30, 2008, reports from Dr. James R. Verheyden, a Board-certified orthopedic surgeon, dated April 3, 2007, reports from Dr. Stewart dated November 28, 2007 and January 9, 2008 and reports from Dr. Soma I. Lilly, a Board-certified neurologist, dated November 6, December 12 and 20, 2007, all previously of record. She submitted an October 31, 2007 letter from the Office to Dr. Stewart, a November 14, 2007 job offer, a November 28, 2007 note from Dr. Stewart advising that appellant was not capable of performing the duties of the offered position, a copy of the December 12, 2007 conference call, a copy of a telephone log from January 11, 2008 and electronic mails from January 23, 2008, all previously of record. Appellant submitted new reports from Dr. Lilly dated March 11, 2008 to January 5, 2009 who treated appellant for persistent bilateral hand pain and diagnosed bilateral thumb arthritis and bilateral thumb trigger fingers and recommended steroid injections. She submitted a global settlement agreement dated March 27, 2008 resolving a grievance filed against the employing establishment. Appellant submitted a statement from Gregory E. Larson, a union representative, dated January 20, 2009, who met with appellant and management to discuss job offer accommodations for appellant, a January 21, 2009 statement from DeAnna Moore who appellant informed that she met with her supervisor and was coming back to work

and a January 22, 2009 statement from Tia Yankovich, who noted witnessing appellant talk with Mr. Larson about returning to work.

In a March 2, 2009 decision, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[3] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[4]

ANALYSIS

Appellant's January 22, 2009 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.

Appellant's request for reconsideration noted that she accepted a job offer and agreed to start on January 28, 2009; however, no accommodations had been made for her when she arrived. She indicated that she received a termination letter the next day. In an addendum statement dated February 3, 2009, appellant noted that she accepted the job offer pursuant to the modifications set forth by Dr. Stewart and requested accommodations for her asthma condition. However, her letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office,

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b).

[4] *Id.* at § 10.608(b).

on January 8, 2008, allowed appellant 15 days to accept the offered job or her monetary benefits would be terminated. Appellant did not return to work in the offered position within 15 days and, on January 24, 2008, the Office terminated her monetary benefits. The fact that she may have returned to work after the January 24, 2008 decision does not show that the Office erred in its January 24, 2008 decision. Appellant did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law. Consequently, she 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted reports from Dr. Depper dated October 5 and November 16, 2004, September 15, 2005 and May 16, 2007, physical therapy notes from October 9, 2006 to January 30, 2008, a report from Dr. Verheyden dated April 3, 2007, reports from Dr. Stewart dated November 28, 2007 and January 9, 2008 and reports from Dr. Lilly dated November 6, December 12 and 20, 2007, all previously of record. Similarly, she submitted an October 31, 2007 Office letter to Dr. Stewart, a November 14, 2007 job offer, a note from Dr. Stewart dated November 28, 2007 advising that appellant was not capable of performing the job duties of the offered position, a copy of the December 12, 2007 conference call, a copy of a telephone log from January 11, 2008 and e-mails from January 23, 2008, all previously of record. The Board notes that these reports are duplicative of evidence already contained in the record that was previously considered by the Office in its decision dated January 24, 2008 and found to be insufficient.[5] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant submitted new medical reports from Dr. Lilly dated March 11, 2008 to January 5, 2009 who treated her for persistent bilateral hand pain and diagnosed bilateral thumb arthritis and bilateral thumb trigger fingers. However these reports are similar to his prior reports of November 6, December 12 and 13, 2007 already contained in the record and were previously considered by the Office in its decision dated January 24, 2008 and found deficient.[6]

Appellant submitted a global settlement agreement dated March 27, 2008 and a statement from Mr. Larson dated January 20, 2009 who met with appellant and management on accommodations set forth in the revised job offer. Similarly, appellant submitted a January 21, 2008 statement from Ms. Moore who appellant advised that she was coming back to work and a January 22, 2009 statement from Ms. Yankovich who noted witnessing appellant talk with Mr. Larson about returning to work. However, this evidence, while new, is not relevant because it does not specifically support that appellant actually returned to suitable work before benefits were terminated on January 24, 2008.

On appeal appellant asserts that she did not sooner seek review of her claim because she was not in the best frame of mind during this period as she was forced to retire and her grandson

[5] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[6] *Id.*

passed away. This assertion, while unfortunate, is not dispositive of the issue before the Board; whether appellant met one of the three regulatory criteria for reopening her claim. Regardless of whether appellant immediately requested reconsideration or waited until almost a year passed, she still needs to submit evidence or argument pursuant to 20 C.F.R. § 10.606(b)(2) in order to receive a merit review. As noted, appellant did not submit sufficient evidence to warrant a merit review under this standard.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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