United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 10-336**
	)	**Issued: August 2, 2010**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Jonesville, VA, 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 November 18, 2009 appellant filed a timely appeal from a June 4, 2009 nonmerit decision of the Office of Workers' Compensation Programs. The most recent merit decision of record is dated January 28, 2009. As the appeal was filed on November 18, 2009, more than 180 days after the most recent merit decision, under 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 30-year-old correctional officer, injured his left leg and left ankle on April 2, 2008 while attempting to restrain an unruly inmate. The Office accepted his claim for a closed fracture of the left ankle and closed fracture of the left fibula. On April 21, 2008 Dr. Robert

Harris, an attending Board-certified orthopedic surgeon, performed surgery to repair appellant's fracture of the left ankle lateral malleous.

In a work capacity evaluation dated September 23, 2008, Dr. Harris found that appellant could return to work for eight hours a day with restrictions on sitting, walking and standing. He indicated that these restrictions would no longer be required as soon as the employing establishment made customized boots available for appellant.

In a November 19, 2008 memorandum, the Office noted that the employer advised that appellant had returned to full duty without restrictions as of November 7, 2008.

On November 24, 2008 appellant filed a schedule award claim based on partial loss of use of his left lower extremity.

On December 9, 2008 the Office advised appellant that it required a medical report from a treating physician which addressed whether he had a permanent impairment stemming from his work-related condition and that he had reached maximum medical improvement. Appellant did not respond.

On January 22, 2009 an Office medical adviser reviewed the medical record and found that there was no basis for a schedule award for appellant's left lower extremity. He noted that appellant underwent surgery to repair a fractured left ankle on April 21, 2008 and that the fracture had healed uneventfully. The Office medical adviser stated that appellant was fully ambulatory with no pain.

In a decision dated January 28, 2009, the Office denied appellant's claim for a schedule award. It found that the medical evidence of record did not establish that he had sustained any permanent impairment due to his accepted condition.

On May 27, 2009 appellant requested reconsideration. He submitted June 16 and August 25, 2008 physical therapy reports which were co-signed by Earnest R. Dickson and Mike Larkin, physical therapists.

In a decision dated June 4, 2009, the Office denied appellant's request for review on the grounds that it did not raise a substantive legal question or included new and relevant evidence sufficient to require the Office to review the claim for merit review.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[1] Evidence that repeats

[1] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[2]

ANALYSIS

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The June 16 and August 25, 2008 physical therapy reports do not constitute probative medical evidence. Physical therapists are not physicians as defined under the Federal Employees' Compensation Act.[3] This evidence is not relevant to the question of whether he sustained permanent impairment to his left leg. Appellant did not present any additional medical evidence pertaining to the relevant issue of permanent impairment causally related to his accepted left ankle and leg fractures. His reconsideration request failed to show that 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 did not abuse its discretion in refusing to reopen his claim for further review on the merits.

CONCLUSION

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

[2] *Howard A. Williams*, 45 ECAB 853 (1994).

[3] *See* 5 U.S.C. § 8101(2). The Board notes that the Office stated erroneously in the June 4, 2009 decision that these reports had been submitted previously by appellant, prior to the January 28, 2009 decision. Any error is harmless, however, as the Office properly found that appellant failed to submit new and relevant medical evidence with his May 27, 2009 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 2, 2010
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