United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 10-1215**
	)	**Issued: December 10, 2010**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Lakewood, CO, 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 March 24, 2010 appellant filed a timely appeal from a November 23, 2009 nonmerit decision of the Office of Workers' Compensation Programs. As over 180 days elapsed since the most recent merit decision of September 2, 2009 to the filing of this appeal, the Board lacks jurisdiction over the merits of appellant's case.[1]

ISSUE

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

FACTUAL HISTORY

On July 29, 2009 appellant, a 20-year-old temporary bioaid, filed a traumatic injury claim alleging that on July 22, 2009 her all terrain vehicle (ATV) flipped over and she sustained injury to her low back, left shoulder, arm and wrist.

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3.

On July 28, 2009 Dr. Michael Schekall, a Board-certified diagnostic radiologist, reported that appellant's left wrist revealed no evidence of fracture, dislocation or significant arthritis. He also reported that x-rays of her cervical spine revealed no evidence of subluxation, disc narrowing, or fracture.

In a July 28, 2009 report, Dr. Jeffrey L. Thode, a Board-certified internist, noted appellant's history of injury due to the ATV rollover incident of July 22, 2009. He also noted that on July 27, 2009 she again tipped her ATV, complaining of a sore neck and right wrist pain. Dr. Thode stated that appellant sustained a possible fracture of the right ulnar styloid.[2] On August 3, 2009 Dr. Schekall reported that x-rays of appellant's right wrist revealed no abnormality.

By decision dated September 2, 2009, the Office denied the claim. It found the medical evidence did not provide a firm diagnosis of a medical condition caused by the accepted incident.

Appellant submitted additional copies of Dr. Schekall's July 28 and August 3, 2009 reports.

On November 9, 2009 appellant requested reconsideration.

By decision dated November 23, 2009, the Office denied the request without conducting a merit review.[3]

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] 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.[5] 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.[6] When a claimant fails to meet one of the above standards, the

[2] The Board notes that the record contains a properly executed Form CA-16, authorizing treatment by Hutchinson Clinic for scratches of appellant's back, left shoulder, arm and pain and swelling of the right wrist.

[3] Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB 293 (2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

[4] 5 U.S.C. §§ 8101-8193. Under section 8128 of the 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).

[5] 20 C.F.R. § 10.606(b)(2).

[6] *Id*. at § 10.607(a).

Office will deny the application for reconsideration without reopening the case for review on the merits.[7]

The Board has held that the submission of evidence or argument which repeats or duplicates that of record does not constitute a basis for reopening a claim.[8] The submission of evidence or argument which does not address the particular issue involved does not warrant reopening a case.[9] While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[10]

ANALYSIS

Appellant's reconsideration request did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, it did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of her claim based upon the first and second requirements under section 10.606(b)(2).[11]

Appellant did not submit relevant and pertinent new evidence not previously considered by the Office. With her reconsideration request, she submitted additional copies of Dr. Schekall's reports. Appellant previously submitted these reports and they were considered by the Office in its prior decision. The submission of evidence which duplicates that already of record does not warrant reopening a case for further merit review.[12] The reports do not constitute relevant and pertinent new evidence not previously considered by the Office.[13]

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.

CONCLUSION

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

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[7] *Id*. at § 10.608(b).

[8] *D.I.*, 59 ECAB 158 (2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[9] *D.K.*, 59 ECAB 141 (2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[10] *M.E.*, 58 ECAB 694 (2007); *John F. Critz*, 44 ECAB 788, 794 (1993).

[11] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[12] *Mary Lou Barragy*, 46 ECAB 781 (1995).

[13] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 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