United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 10-1325**
	)	**Issued: February 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 April 12, 2010 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated October 14, 2009 that denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, 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 claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. By decision dated July 24, 2007, the Board found that, by its September 28, 2005 decision, the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), that he failed to meet his burden of proof to establish that he was totally disabled for the period December 1 to 15, 2004, and that the Office properly denied his April 19, 2006

reconsideration request.[1] In a June 1, 2009 decision, the Board found that appellant failed to meet his burden of proof to establish that he was totally disabled for the periods November 17 to December 30, 2005, January 1 to April 30, 2006 and July 1 to September 30, 2006.[2] The law and facts of the previous Board decision are incorporated herein by reference.

In an undated letter received by the Office on August 28, 2009, appellant requested reconsideration of the Board's June 1, 2009 decision, attesting that the employing establishment removed his light-duty position on November 17, 2005. He referenced an employing establishment letter dated February 8, 2006 advising that, given his current limitations and medical restrictions, no work was available, and a June 25, 2007 duty status report from Dr. Stephen E. Fuhs, an attending Board-certified orthopedic surgeon, as being supportive of his claim. In an August 4, 2008 statement, appellant maintained that he was improperly removed from a bid position. He submitted employing establishment correspondence and time and attendance records; a September 25, 2007 grievance appeal form; an arbitration decision dated July 6, 2008, finding that the employing establishment did not violate postal policies when it failed to offer appellant a light or limited-duty assignment; an arbitration decision dated May 31, 2009 finding that the matter in question had been decided by a previous arbitration panel and was therefore barred by the doctrine of collateral estoppel/res judicata; employing establishment e-mails dated January 25 to February 2, 2005; medical reports previously of record; and an undated statement from Fred Santiaguel, a coworker, regarding the events of November 27, 2005 that was previously of record. In a July 28, 2008 report, Dr. John A. Moen, a Board-certified internist, described appellant's complaint of right hand pain and inability to grasp with his right hand. He provided physical examination findings and restrictions to appellant's physical ability. An August 5, 2009 upper extremity physical capacities evaluation advised that appellant could occasionally reach overhead with a weight of 50 pounds and should not perform repetitive right wrist motion.

By decision dated October 14, 2009, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was repetitious or irrelevant.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[3] vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[4] Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[5] This section provides that the

[1] Docket No. 06-1823 (issued July 24, 2007).

[2] Docket No. 08-2061 (issued June 1, 2009).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Id.* at § 8128(a).

[5] 20 C.F.R. § 10.608(a).

application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.[6] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[7]

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of the Office dated October 14, 2009 denying appellant's application for review. Because there is no merit decision of the Office within the Board's jurisdiction, the Board lacks jurisdiction to review the merits of appellant's claim.

With his August 2009 reconsideration request, appellant asserted that the employing establishment improperly removed his light-duty position on November 17, 2005. This argument was previously reviewed by the Board in its June 1, 2009 decision and therefore does constitute a basis for reopening a case.[8] Appellant therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, he was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[9]

With respect to the third above-noted requirement under section 10.606(b)(2), on reconsideration appellant referenced February 8, 2006 correspondence from the employing establishment and a June 28, 2007 duty status report that had previously been reviewed by both the Office and the Board. He also submitted previously reviewed statements and medical reports. The Board has long held that evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.[10]

The arbitration decisions are not supportive of appellant's claim that his light duty was improperly removed and the grievance form is not a final decision. The time and attendance records are not relevant to the merit issue of whether appellant established that he was disabled for certain periods, and the e-mails, Dr. Moen's report and the physical capacities evaluation are not relevant to the periods of disability claimed. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[11]

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[6] *Id.* at § 10.608(b)(1) and (2).

[7] *Id.* at § 10.608(b).

[8] *M.E.*, 58 ECAB 694 (2007).

[9] 20 C.F.R. § 10.606(b)(2).

[10] *Freddie Mosley*, 54 ECAB 255 (2002).

[11] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

As appellant did not show that the Office erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his reconsideration request.[12]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 14, 2011
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

[12] *Supra* note 6.