United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 10-1636**
	)	**Issued: February 4, 2011**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Los Angeles, CA, 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 June 4, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 22, 2009 nonmerit decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its August 13, 2009 decision denying appellant's traumatic injury claim. The Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

On appeal, appellant contends that the statement of his acting supervisor should be sufficient to establish that he was injured in the performance of duty.

FACTUAL HISTORY

On October 22, 2008 appellant, a 47-year-old supervisory criminal investigator, filed a traumatic injury claim alleging that he sustained bilateral inguinal hernias while lifting heavy boxes during a work-related move. The Office originally received the claim as a simple, uncontroverted case resulting in minimal or no time loss from work. Accordingly, the claim was handled administratively to allow for payment up to $1,500.00; the merits of the claim were not considered at that time.

Appellant submitted a May 4, 2009 report from Dr. Jose M. Perez, a Board-certified surgeon, who diagnosed bilateral inguinal hernias. In October 2009, he first noticed two bulges in his groin area that increased in size and caused pressure. The record also contains a May 19, 2009 request for authorization for surgery.

In a July 6, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to provide additional information as to how the claimed incident occurred, as well as a medical report containing a diagnosis, examination findings and an opinion explaining how the diagnosed condition resulted from the claimed work event.

In a July 27, 2009 statement, appellant provided details surrounding the claimed October 21, 2008 incident. On the date in question, he was involved in moving the contents of his office from Los Angeles to Long Beach, CA. While lifting the heaviest box, weighing approximately 40 pounds, appellant felt a pull and a distinct tingling sensation down his left leg and a slight bulge in his left groin.

Appellant submitted a May 12, 2009 form from his health insurance carrier approving an inguinal hernia procedure. He also submitted a July 16, 2009 explanation of benefits form from Anthem Blue Cross.

In a decision dated August 13, 2009, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed hernia condition resulted from the established work-related incident.

On November 30, 2009 appellant requested reconsideration. He stated that his symptoms began to present themselves slowly over time following the October 21, 2008 incident. Appellant noted that he was providing a statement from Simon Porter, his acting group supervisor, who was present when the incident occurred. In an October 22, 2010 statement, Mr. Porter indicated that he was helping another employee load boxes into a government van in Los Angeles, CA on October 21, 2008. He noticed appellant pushing a cart loaded with boxes. Appellant, who was walking as if in pain, told Mr. Porter that he had sprained his groin while moving boxes to his new office in Long Beach.

By decision dated December 22, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office 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.[3] 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.[4] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[5] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[6]

ANALYSIS

Appellant's November 30, 2009 request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is 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).

In support of his request for reconsideration, appellant submitted a statement from the acting group supervisor describing his behavior and relating a comment made on the date of the accepted incident. The Board notes that the Office accepted the October 21, 2008 incident. The basis of the Office's decision denying appellant's claim was medical in nature. The supervisor's statement, which addressed the factual elements of the claim, was irrelevant to the issue of causal relation.

On appeal, appellant contends that Mr. Porter's statement is sufficient to establish that he was injured in the performance of duty. The supervisor's lay opinion as to appellant's medical condition is not relevant, as the Board has held that lay individuals are not competent to render a medical opinion.[7] The Board finds that Mr. Porter's statement does not constitute relevant and

[2] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Id*. at § 10.607(a).

[5] *Id*. at § 10.608(b).

[6] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[7] *Gloria J. McPherson*, 51 ECAB 441 (2000).

pertinent new evidence not previously considered by the Office.[8] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 22, 2009 is affirmed.

Issued: February 4, 2011
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

[8] *See Susan A. Filkins*, 57 ECAB 630 (2006).