United States Department of Labor
Employees' Compensation Appeals Board

ELEANORE A. RYAN, Appellant	)	
and	)	**Docket No. 04-1685**
	)	**Issued: December 3, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Oak Park, IL, Employer	)	

Appearances:
Eleanore A. Ryan, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 19, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated April 2, 2004 which denied her request for reconsideration. Because more than one year has elapsed between the last merit decision of the Office dated April 4, 2003 and the filing of this appeal on June 19, 2004, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 22, 1996 the Office accepted that appellant, then a 65-year-old retired psychologist, sustained an employment-related mild depression, single episode. On April 18, 1996 she filed a Form CA-7, claim for compensation for intermittent periods between August 5,

1993 and August 11, 1995, when she retired. Appellant attached a statement indicating that she had taken 1,637 hours of leave during this period. In a decision dated October 20, 2000 and finalized October 23, 2000, the Office denied compensation for certain periods on the grounds that leave was used, the disability was not employment related or the medical evidence of record was insufficient to establish entitlement.[1] Appellant was, however, paid wage-loss compensation for a total of 958 hours.

By letter dated November 3, 2000, appellant requested a hearing that was held on February 28, 2001. At the hearing, she testified that the medical evidence established that she was disabled and entitled to wage-loss compensation. Appellant submitted a letter dated February 27, 2001 in which Dr. Burton Siegel, an attending clinical psychologist, forwarded his November 11, 1994 report regarding her condition. In a decision dated May 22, 2001, an Office hearing representative affirmed the October 23, 2000 decision.

On August 19, 2001 appellant requested reconsideration and submitted additional evidence. By decision dated January 8, 2002, the Office denied modification of the May 22, 2001 decision, finding that the medical evidence was insufficient to establish that appellant was entitled to additional compensation. She again requested reconsideration on January 3, 2003 and submitted a report dated December 26, 2002, in which Dr. Judith B. Frigo, Board-certified in family medicine, advised that it was her opinion that appellant should not have returned to work in August 1994, but that she and appellant "settled" on part-time work because appellant wished to work. In a January 2, 2003 report, Dr. Siegel stated that, while she worked on a part-time basis, "neither I nor appellant's medical doctor ever defined the 'part-time' period. I believe we both felt that it would be better if she did not expose herself to the environment there at all."

By decision dated April 4, 2003, the Office denied modification of the prior decisions. On March 21, 2004 appellant again requested reconsideration, arguing that the medical evidence of record supported entitlement to wage-loss compensation.

In a decision dated April 2, 2004, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT

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).[2] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new

[1] The Office found that appellant was not entitled to wage-loss compensation for 52.25 hours that ended on August 7, 1993 for intermittent periods between August 10, 1993 and August 3, 1994, the entire period between July 6 and August 9, 1994, intermittent periods in excess of 4 hours per day from August 3 to 12, 1994 and for February 24, 27 and 28, 1995.

[2] 20 C.F.R. § 10.608(a).

evidence not previously considered by the Office.[3] 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.[4]

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated April 2, 2004, denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated April 4, 2003 and the filing of appellant's appeal with the Board on June 19, 2004 the Board lacks jurisdiction to review the merits of her claim.[5]

In her March 21, 2004 reconsideration request, appellant submitted no additional evidence but contended that the medical evidence of record established that she was entitled to wage-loss compensation for the period of disability claimed. She, however, had previously made these same contentions in previous statements, reconsideration requests and at the hearing.

The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.[6] The lack of supporting medical evidence has been discussed in previous Office decisions. Appellant, therefore, did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.[7]

Appellant did not submit new and relevant evidence with her reconsideration request but merely reiterated allegations that had been previously considered by the Office. The Board, therefore, finds that her March 21, 2004 reconsideration request does not show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office.[8] Thus, the Office properly determined that appellant's request did not constitute a basis for reopening the case for further merit review.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review on April 2, 2004.

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[3] 20 C.F.R. § 10.608(b)(1) and (2).

[4] 20 C.F.R. § 10.608(b).

[5] 20 C.F.R. § 501.3(d)(2).

[6] *Edward W. Malaniak*, 51 ECAB 279 (2000).

[7] *Supra* note 3.

[8] *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 2, 2004 be affirmed.

Issued: December 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member