United States Department of Labor
Employees' Compensation Appeals Board

LARRY S. HUFFMAN, Appellant	)	
and	)	**Docket No. 05-961**
	)	**Issued: July 19, 2005**
DEPARTMENT OF THE ARMY, DESERET CHEMICAL DEPOT, Stockton, UT, Employer	)	

Appearances:
Larry S. Huffman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 18, 2005 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs' dated January 11, 2005, denying reconsideration of a March 17, 2003 merit decision.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the March 17, 2003 merit decision, as appellant's appeal was filed more than one year after issuance of that decision.

ISSUE

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

FACTUAL HISTORY

On October 14, 2002 appellant, then a 46-year-old quality assurance coordinator, filed a compensation claim alleging that on July 15, 1982 he injured his back when a truck axle he was

[1] The Office's March 17, 2003 decision rescinded acceptance of appellant's claim for a back strain and sprain.

lifting slipped and fell and he caught it.[2] He also alleged that his back condition was caused or aggravated by his job duties, including lifting, bending, pushing, standing and walking on concrete floors.[3]

In a report dated November 5, 2002, Dr. Allen E. Workman, an attending orthopedic surgeon, indicated that appellant had a history of low back problems since the 1980's. He noted that a February 8, 2002 magnetic resonance imaging (MRI) scan revealed a large disc herniation at L5-S1. A microdiscectomy, performed on March 11, 2002 showed an irritable S1 nerve root on the right and a large herniated disc. Appellant had a second surgical procedure on September 16, 2002. Dr. Workman indicated that his back problem was associated with his work history, involving primarily physical labor.

On December 30, 2002 the Office accepted appellant's claim for lumbosacral sprain and strain, resolved.

By decision dated March 17, 2003, the Office rescinded its acceptance of appellant's back condition on the grounds that the medical evidence did not establish that his condition was causally related to factors of his federal employment. The Office stated that it had erred in accepting the back condition because Dr. Workman did not provide sufficient medical rationale in support of his opinion on causal relationship.

On June 2, 2003 appellant requested reconsideration and submitted additional evidence. He argued that his back condition was caused by the July 15, 1982 work incident when he lifted a truck axle and an April 21, 1995 work incident, when he lifted hydrogen and nitrogen bottles. In a May 27, 2003 report, Dr. Workman stated his opinion that appellant's back problem stemmed from his job. He stated:

> "The type of work [appellant] did was repetitive in nature and his disc finally completely ruptured with the repetitive work which caused his leg problems. It is my opinion that, if he had not been doing this type of work, [appellant] would never have had a herniated disc."

By decision dated July 8, 2003, the Office denied appellant's request for reconsideration on the grounds that the medical evidence did not establish that his back condition was causally related to his employment and was, therefore, insufficient to warrant modification of the March 17, 2003 merit decision. The Office noted that Dr. Workman's opinion on causal relationship was deficient, in that it did not describe appellant's specific job duties and the mechanism of injury or other possible causes of the back problem in light of his long history of

[2] In 1982, appellant was working at the Tooele Army Depot in Tooele, Utah. He later transferred to the Deseret Chemical Depot in Stockton, Utah.

[3] On April 26, 1995 appellant filed a claim alleging that on April 21, 1995 he strained his back while moving hydrogen and nitrogen bottles from the back of a truck.

such problems.[4] The Office noted that he did not address the July 15, 1982 and April 21, 1995 work incidents which appellant alleged were causally related to his back problem.

On September 2, 2003 appellant requested reconsideration and submitted additional evidence. In an August 14, 2003 report, Dr. Workman stated:

> "It is my opinion and I believe that there is more than enough evidence to support this, that [appellant's] problem with his back was directly related to his working status over the years. It is my opinion, as I have previously stated that, if he had not been doing this type of work he would never have had a herniated disc. I do not think it is a causal relationship but rather a direct relationship to his work at the [employing establishment]. I do not know how to make this any clearer."

By decision dated December 30, 2003, the Office denied modification of its decision to rescind acceptance of appellant's back condition on the grounds that the evidence was insufficient to warrant further merit review. The Office stated that Dr. Workman's August 14, 2003 report did not review his specific work activities and provide medical rationale explaining how these activities caused or aggravated appellant's back condition and also did not address the issue of his long history of back problems.

On October 4, 2004 appellant requested reconsideration and submitted additional evidence. In a September 7, 2004 report, Dr. Workman stated that he had a history of low back problems since 1974 which occurred whenever he performed "labored lifting or extra work." He stated:

> "[M]any times people will have low back problems from an injury. This could go on and off for a number of years with just back problems. With any type of extra duties or activities such as [appellant's] work at the [employing establishment,] the back will go out and they will see a chiropractor and it gets better or just with time it will get better. Then for some reason or another it will weaken enough that they get a herniation. Once that happens, it relieves the back pain but puts pressure on a nerve root. This is exactly what happened to [appellant]. This is a natural progression for a disc problem in the majority of cases. Most people cannot put an exact date on exactly what caused it or when, but it can occur with repeated types of work activities or perhaps just with playing basketball or golf. In [appellant's] case, there was just the history of his job.
>
> "I can speak from personal experience on this matter. I have had back problems on and off for a number of years. About two and one-half years ago after playing golf I started getting leg pain. I immediately knew what happened. I went ahead and had surgery within three weeks. This was from a weak disc from activities in

[4] In a report dated May 1, 1995, Dr. Brian T. Ruggles stated that appellant had a long history of back problems "since he was a young child." In an October 24, 1995 report, Dr. Ruggles noted that six days previously he was moving a lot of firewood and could not get out of bed the next day. In a report dated May 30, 2001, Dr. Devron Brown, a chiropractor, gave a history of low back problems beginning 25 years previously with no known cause. He also noted that appellant had been involved in a motor vehicle accident 20 years previously.

prior years. Aggravation with golf or heavy lifting will cause these types of aggravations. In [appellant's] case, I believe his work activities caused his problem."

By decision dated January 11, 2005, the Office denied appellant's request for reconsideration on the grounds that the medical evidence was cumulative and merely a restatement of previously considered evidence.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act provides that, the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts found on review, may end, decrease or increase the compensation previously awarded; or award compensation previously refused or discontinued.[5]

The Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.[6] 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.[7] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.[8]

The Board has held that evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[9]

ANALYSIS

The underlying issue in this case is whether appellant's back condition was caused or aggravated by factors of his federal employment. He alleged that his condition was caused or aggravated by work incidents on July 15, 1982 when a truck axle slipped and appellant caught it and on April 21, 1995 when he was moving heavy bottles from a truck. Appellant also alleged that his back condition was caused or aggravated by his job duties, including lifting, bending, pushing, standing and walking on concrete floors.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b)(2).

[7] 20 C.F.R. § 10.607(a).

[8] 20 C.F.R. § 10.608(b); *see also Ronald A. Eldridge*, 53 ECAB 218 (2001).

[9] *Arlesa Gibbs*, 53 ECAB 204 (2001).

The Office found in its July 8 and December 30, 2003 decisions that Dr. Workman's opinion on causal relationship expressed in his November 5, 2002 and May 27 and August 14, 2003 reports was deficient in that he did not describe appellant's specific job duties and the specific mechanism of injury or other possible causes of the back problem in light of his long history of back problems.[10] The Office also found that he did not address the July 15, 1982 and April 21, 1995 work incidents which appellant alleged were causally related to his back problem. The Office further found that Dr. Workman failed to provide sufficient medical rationale in support of his opinion on causal relationship.

The Board finds that the September 7, 2004 report of Dr. Workman is duplicative and repetitious of his previous reports. It does not constitute relevant and pertinent evidence not previously considered by the Office as it is similar to his previous reports and fails to correct the deficiencies in those reports. In his September 7, 2004 report, Dr. Workman did not describe appellant's specific job duties and the specific mechanism of injury or other possible causes of the back problem in light of his long history of back problems. He did not address the July 15, 1982 and April 21, 1995 work incidents which appellant alleged were causally related to his back problem. Dr. Workman also failed to provide sufficient medical rationale in support of his opinion on causal relationship.

The September 7, 2004 report from Dr. Workman did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered, nor did it constitute relevant and pertinent evidence not previously considered by the Office. For this reason, the report was insufficient to require the Office to reopen the case for further merit review. Accordingly, the Office properly denied the request for reconsideration.

CONCLUSION

The Board finds that appellant did not submit relevant and pertinent new evidence warranting further merit review of the March 17, 2003 merit decision. Thus, the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

[10] As noted, the record reflects that appellant had a history of back problems dating back at least 25 years and that he was involved in a motor vehicle accident 20 years previously.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2005 is affirmed.

Issued: July 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board