United States Department of Labor
Employees' Compensation Appeals Board

DEBORAH J. LICHTENBERG, Appellant	)	
and	)	**Docket No. 06-697**
	)	**Issued: June 26, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

Appearances:
Deborah J. Lichtenberg, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 31, 2005, which denied her request for reconsideration. Pursuant to its regulations, the Board has jurisdiction over this nonmerit decision.[1] Because more than one year has elapsed between the Office's most recent merit decision dated December 30, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On December 20, 2001 appellant, then a 43-year-old window sales clerk, filed a traumatic injury claim alleging that on December 21, 2000 she was struck on the head by a package while assisting a customer. Appellant did not stop work.[2] On July 23, 2002 the Office accepted appellant's claim for contusion to the jaw, cervical strain, shoulder strain and headaches. The Office continued to develop appellant's claim. By decision dated July 30, 2003, the Office awarded appellant compensation for 21.84 weeks from December 12, 2001 to May 22, 2002, based upon a seven percent permanent impairment of the right upper extremity.

In an April 16, 2002 report, Dr. Howard J. Hoffberg, Board-certified in physical medicine and rehabilitation and appellant's treating physician, diagnosed cervical strain with radiculopathy and headaches and advised that appellant was totally disabled from March 15, 2001 to March 12, 2002.

On November 27, 2003 appellant filed a Form CA-7 for wage-loss compensation from May 7, 2001 to August 13, 2002.[3]

By decision dated December 30, 2003, the Office denied appellant's claim for compensation from March 15, 2001 to August 14, 2002.

The Office subsequently received reports from appellant's physical therapist dating from September 4, 2002 to February 24, 2004.

In a February 16, 2002 report, Dr. Hoffberg noted appellant's history of injury and treatment, which included a history of thoracic outlet release. He noted that appellant had evidence of cervical spine radiculopathy in C5 to C7 and opined that appellant's symptoms were related to her work-related injury. Dr. Hoffberg recommended that appellant be placed off work. In a March 12, 2002 report, he advised that appellant could return to full duty without restrictions on April 13, 2002. Dr. Hoffberg subsequently advised that appellant was disabled through August 1, 2002. In reports dated August 8, September 26 and December 12, 2002, January 16 and August 28, 2003 and March 12, 2004, he advised that appellant could return to full duty. In a February 24, 2003 report, Dr. Hoffberg opined that appellant was able to work full time with restrictions of no lifting greater than 20 pounds and no overhead lifting.

In a June 1, 2004 report, Dr. Hoffberg diagnosed a cervical strain and cervical disc disease with cervical radiculopathy. He noted that appellant was subsequently cleared for full-time work with restrictions; however, he explained that, "due to delays in accepting her activity limitations, she did not actually return to work until August 15, 2002." Dr. Hoffberg opined that, "[t]herefore, she was disabled from her regular occupation from February 6, 2002 (her initial visit with me) until August 14, 2002, based upon my recommendations for activity restrictions, which were not accepted by employers until then."

---

[2] The record indicates that she returned to full duty with a 20-pound lifting restriction and limited overhead reaching.

[3] Appellant filed a second Form CA-7 for the same period on November 27, 2003.

In an August 9, 2004 report, Dr. Hoffberg reiterated that appellant was previously diagnosed with cervical strain and opined that it was an incorrect diagnosis. He explained that appellant actually had "a true diagnosis of cervical disc disease with cervical radiculopathy causing her to have approximately 25 percent impairment to her right upper extremity." Dr. Hoffberg opined that appellant was rehabilitated and had started to work.

The Office received additional treatment notes and therapy reports. In an April 4, 2001 report, Dr. Frank Palmisano, Jr., a Board-certified general practitioner, diagnosed an upper respiratory infection with left temporomandibular joint tenderness and advised keeping appellant off work until her evaluation with another physician, if she was "able." The Office received a disability certificate from Dr. Jeffrey A. Murveit, a physician of unknown specialty, excusing appellant from work on April 16 to 27, 2001. The Office also received disability certificates from Dr. Mildred A. Marion, a physician of unknown specialty, advising that appellant was totally incapacitated from June 14 to July 19, 2001 and from Dr. Michele T. Cerino, a Board-certified surgeon, advising that appellant was unable to work from July 19, 2001 to the present. Dr. William Keys, a Board-certified neurologist, advised that appellant was unable to work from January 16 to February 16, 2002 and that she could subsequently return to regular duty.

By decision dated December 30, 2004, the Office found that appellant had not met her burden of proof in establishing that she was entitled to compensation for the period March 15, 2001 to August 14, 2002.

On September 27, 2005 the Office received appellant's request for reconsideration. Appellant submitted additional therapy reports, a discharge report from James B. Lightner, Jr., a rehabilitation specialist, and copies of other reports, which were previously received.

By decision dated October 31, 2005, the Office denied appellant's reconsideration request without reviewing the case on the merits as the evidence was cumulative. The Office determined that, appellant did not raise any substantive legal questions nor did she include relevant and pertinent new evidence and thus, her request was insufficient to warrant a review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[4] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(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

[4] 5 U.S.C. § 8128(a).

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office]."[5]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[6]

ANALYSIS

Appellant disagreed with the denial of her claim for compensation for the period March 15, 2001 to August 4, 2002, due to her accepted injury of December 21, 2000. She requested reconsideration, which was received by the Office on September 27, 2005. The underlying issue on reconsideration was whether appellant established that she was entitled to compensation for disability for the period March 15, 2001 to August 4, 2002, due to her accepted employment injury. However, appellant did not provide any relevant or pertinent evidence to this issue.

In support of her request for reconsideration, appellant submitted documents that were previously of record. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.[7] Appellant did not provide any relevant and pertinent new evidence to establish that she was disabled for the period March 15, 2001 to August 4, 2002, due to her accepted employment injury.

Appellant also submitted reports from therapists; however, these reports are not considered medical evidence and are not relevant to the issue of whether appellant was disabled for the period March 15, 2001 to August 4, 2002, due to her accepted employment injury. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence[8] and are not relevant to the underlying medical issue.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously considered. Therefore, the Office properly denied her request for reconsideration.

---

[5] 20 C.F.R. § 10.606(b).

[6] *Id*.

[7] *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

[8] *See Jan A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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