United States Department of Labor
Employees' Compensation Appeals Board

LUIS G. SANABRIA, Appellant	)	
and	)	**Docket No. 05-1487**
	)	**Issued: May 12, 2006**
DEPARTMENT OF THE TREASURY, U.S. MARSHALS SERVICE, Fort Myers, FL, Employer	)	

Appearances:
Luis G. Sanabria, 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 July 5, 2005 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs dated April 26, 2005, denying his reconsideration request. Because more than one year has elapsed between the most recent merit schedule award decision of May 11, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of that claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On April 3, 2000 appellant, then a 52-year-old deputy marshal, filed a claim for traumatic injury alleging that on March 31, 2000 he sustained multiple injuries as a result of a motor vehicle accident while in the performance of duty. Appellant stopped work on the date of injury.

The Office accepted the claim for cervical strain, aggravation of a lumbar strain and displacement of a lumbar intervertebral disc without myelopathy.

On March 29, 2000 Dr. E. Joy Arpin, appellant's treating Board-certified neurologist, related that two weeks prior appellant was pushing a trunk lid down when he had the sudden onset of severe back pain and left radiculopathy. In a report dated April 7, 2000, Dr. Arpin stated that appellant had a prior microsurgical discectomy on October 5, 1999 but a recent work-related motor vehicle accident caused a recurrent disc herniation at L4-5 on the left as revealed by magnetic resonance imaging (MRI) scan.[1] She also related that, about three weeks earlier, appellant sustained mild pain in the paraspinous area when he lifted objects out of a trunk. On April 28, 2000 Dr. Arpin requested authorization for surgery.

In a report of a telephone call dated May 9, 2000, the Office advised appellant it would not authorize surgery for lumbar microdiscectomy. On June 1, 2000 Dr. Arpin performed an L4-5 microsurgical reexploration excision of epidural fibrosis and a small recurrent disc herniation. On June 9, 2000 she provided a normal postoperative report.

On September 6, 2000 the Office requested that an Office medical adviser determine if the April 11, 2000 surgery for L4-5 disc herniation was work related and whether further accepted conditions were warranted.[2] That day the Office medical adviser reviewed the MRI scan and found no objective evidence of abnormal neurological findings to support the need for surgery. On September 29, 2000 Dr. Arpin released appellant to return to full duty without restrictions.

In a report dated July 28, 2003, Dr. Jamie A. Alvarez, a Board-certified neurologist and an associate of Dr. Arpin, noted appellant's history of injury including the October 1999 microsurgical discectomy at L4-5, his subsequent impairment rating of nine percent according to the Florida impairment schedule, his motor vehicle accident and repeat L4-5 surgery in June 2000 and his September 2000 release to full duty. Dr. Alvarez opined that appellant might have a degenerative disc at L4-5 given its surgical history and prescribed physical therapy three times a week for four weeks.

On August 25, 2003 appellant filed a claim for a schedule award. On September 22, 2003 the Office requested Dr. Alvarez to determine the extent of permanent impairment of the lower extremities based on appellant's March 31, 2000 employment injury. The Office advised Dr. Alvarez to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*) (5th ed. 2001) in his evaluation.

In a report dated October 3, 2003, Dr. Alvarez stated that he treated appellant after completion of physical therapy and that he continued to be symptomatic with left low back pain and intermittent pain in the left lower leg extending into the heel. Appellant stated that his

[1] The record includes surgical report from Dr. Arpin dated October 5, 1999 indicating a microsurgical discectomy performed that day. She stated on April 27, 2000 that appellant's surgery on October 5, 1999 was at the L4-5 level, correcting prior records that indicated L5-S1.

[2] It would appear the Office meant the June 1, 2000 surgery.

symptoms were related to the March 31, 2000 motor vehicle accident. Dr. Alvarez reported a normal physical examination and recommended a lumbar MRI scan. He noted that appellant had not yet reached maximum medical improvement. On October 29, 2003 he stated that appellant's lumbar MRI scan revealed an L5 degenerative disc but no evidence of recurrent herniated nucleus pulposus, stenosis or neurocompression and that the S1 nerve root was normal bilaterally. He stated that appellant exhibited a normal gait, had intact sensation and strength throughout the lower extremities and normal straight leg raising. Dr. Alvarez recommended an evaluation by a physiatrist and stated that he would maintain the findings of Dr. Arpin: that appellant had reached maximum medical improvement on October 29, 2003 and had a permanent impairment rating of nine percent according to Florida rating standards.

On February 10, 2004 the Office advised Dr. Alvarez that it required use of the A.M.A., *Guides* (5th ed. 2001) to support an impairment rating. The Office noted that it did not compensate employees for impairment to the lumbar or cervical spine, but that, if either of these areas affected use of the upper or lower extremities, the employee would be entitled to an impairment rating. The Office noted appellant's accepted conditions of displacement of lumbar intervertebral disc without myelopathy, cervical sprain and strain and lumbar sprain and strain.

In a form report dated February 13, 2004, Dr. Alvarez stated that appellant's L5 nerve root was affected, that he reached maximum medical improvement on October 29, 2003 and had 10 percent permanent impairment of the lower extremity due to loss of function from sensory deficit, pain or discomfort and 10 percent impairment due to loss of function from decreased strength.

On February 20, 2004 an Office medical adviser stated that he had reviewed Dr. Alvarez' October 29, 2003 report, which noted a normal examination. Dr. Alvarez added that the MRI scan revealed no evidence of recurrent herniated nucleus pulposus, stenosis or neural compression and that the S1 nerve root was normal bilaterally. He determined that the evidence did not support a 10 percent impairment of the legs.

By decision dated May 11, 2004, the Office denied appellant's claim for a schedule award finding that the evidence was not sufficient to establish that he sustained permanent impairment due to the March 31, 2000 accepted injuries.

On January 30, 2005 appellant noted that he disagreed with the Office's May 11, 2004 decision stating that there was a medical conflict between Dr. Alvarez and the Office medical adviser. By decision dated April 26, 2005, the Office denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[3]

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4]

ANALYSIS

Appellant's January 30, 2005 reconsideration request is insufficient to require the Office to conduct a merit review of his claim pursuant to any of the three regulatory criteria, noted above, for reopening a claim.

The underlying issue in the case is medical in nature, whether the medical evidence supports permanent employment-related impairment to a schedule member of the body pursuant to the A.M.A., *Guides*. However, appellant did not submit any new and relevant medical evidence with his reconsideration request. Consequently, appellant did not meet the regulatory requirement, noted above, by submitting relevant and pertinent new evidence not previously considered by the Office.

The Board also finds that appellant's January 30, 2005 letter requesting reconsideration also did not meet either of the two remaining regulatory criteria for reopening a claim; showing that the Office erroneously applied or interpreted a specific point of law or advancing a relevant legal argument not previously considered by the Office. The only argument that appellant made in support of his request for reconsideration was that he felt there was a medical conflict between Dr. Alvarez and the Office medical adviser. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the

[3] 5 U.S.C. § 8128(a).

[4] *Eugene F. Butler*, 36 ECAB 393 (1984).

legal contention does not have a reasonable color of validity.[5] The Board finds that appellant's argument that there is a medical conflict is without any reasonable color of validity. This is because the Office evaluates schedule award claims based on the A.M.A., *Guides*[6] but Dr. Alvarez did not indicated how or if, he followed these guidelines in calculating appellant's impairment. Thus, appellant's argument that Dr. Alvarez created a medical conflict does not show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered by the Office.

The Board accordingly finds that the Office properly denied the reconsideration request without merit review of the claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated April 26, 2005 is affirmed.

Issued: May 12, 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

[5] *See John F. Critz*, 44 ECAB 788, 794 (1993).

[6] *See* 20 C.F.R. § 10.404; *Linda R. Sherman*, 56 ECAB ___ (Docket No. 04-1510, issued October 14, 2004).