

On April 10, 2000 appellant, then a 20-year-old mail carrier, filed a traumatic injury claim. On that date, she hurt her lower back when she slipped and fell down steps after putting mail in a customer's mailbox. Appellant stopped work on April 10, 2000. By letter dated

April 25, 2000, the Office accepted appellant's claim for contusion of the buttocks and hip and lumbosacral sprains. Appellant subsequently returned to limited-duty work. On July 26, 2000 she stopped work and did not return. In November 2000, appellant began working at a jewelry store in a mall as a store manager.

By decision dated June 16, 2004, the Office terminated appellant's compensation benefits effective June 14, 2004 on the grounds that she no longer had any residuals or disability causally related to her April 10, 2000 employment-related injury. The Office accorded special weight to an August 20, 2003 medical opinion of Dr. Alan Wilde, an impartial medical specialist, who found that appellant's employment-related conditions had resolved, that she could return to her former letter carrier position without restrictions and that she had no permanent impairment.<sup>1</sup>

By letter dated June 18, 2004, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

In a decision issued on June 17, 2005, an Office hearing representative affirmed the June 16, 2004 decision. The hearing representative found that Dr. Wilde's August 20, 2003 medical opinion was entitled to special weight as an impartial medical specialist.

By letter dated June 10, 2006, appellant requested reconsideration. She submitted an August 1, 2005 treatment note of Andrea L. Boyd, a physician's assistant. Ms. Boyd stated that appellant sustained lumbosacral radiculopathy that was secondary to her accepted work-related lumbosacral strain. She further stated that appellant was unable to return to work as a mail carrier based on her physical restrictions. In a January 26, 2006 treatment note, Ms. Boyd indicated that appellant experienced an exacerbation of her lumbosacral radiculopathy. Appellant submitted duplicate copies of Ms. Boyd's treatment dated May 23, 2002 to April 14, 2003, which addressed appellant's low back pain. In reports dated July 26, 2001 to March 13, 2003, Dr. Sawhny addressed appellant's back problems. The records includes a normal September 11, 2001 electromyogram and nerve conduction study (EMG/NCS) performed by Dr. K.C. Ravishankar, a Board-certified neurologist. An August 9, 2001 pelvis ultrasound of Dr. James E. Lalak, a Board-certified radiologist, was reported as negative. A November 3, 2005 magnetic resonance imaging (MRI) scan report of Dr. Victor A. Ceicys, a Board-certified radiologist, demonstrated a normal lumbar spine.

By decision dated August 15, 2006, the Office denied appellant's request for reconsideration as the evidence submitted was not relevant and cumulative in nature and, thus, insufficient to warrant further merit review of its prior decisions.

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<sup>1</sup> The Office found a conflict in the medical opinion evidence between Dr. Sheldon Kaffen, an Office referral physician, and Dr. Bhupinder S. Sawhny, an attending Board-certified neurosurgeon, regarding the issue of whether appellant had any continuing employment-related residuals and disability. In a January 22, 2003 report, Dr. Kaffen opined that there were no objective findings to support that appellant had any continuing residuals of her accepted employment-related conditions, that she could perform limited-duty work and that she had zero percent impairment of the lower extremities. In a March 13, 2003 report, Dr. Sawhny opined that appellant had residuals of her employment-related conditions and that she was unable to return to work as a mail carrier.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that 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.<sup>3</sup> 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.<sup>4</sup> 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 of the merits.

### **ANALYSIS**

By letter dated June 10, 2006, appellant disagreed with the termination of her compensation benefits on the grounds that she no longer had any residuals or disability causally related to her accepted April 10, 2000 employment-related injury. The relevant underlying issue is whether appellant had any residuals or disability causally related to her accepted employment-related injuries.

The treatment notes of Ms. Boyd, a physician's assistant, are insufficient to warrant reopening appellant's claim for further merit review. A physician's assistant is not considered a physician under the Act<sup>5</sup> and the underlying issue is medical in nature.

The copies of Dr. Sawhny's July 26 and September 20, 2001 and March 13, 2003 reports, Dr. Ravishankar's September 11, 2001 EMG/NCS report and Dr. Lalak's August 9, 2001 pelvis ultrasound findings were previously of record and considered by the Office. 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.<sup>6</sup> The Board, therefore, finds that these reports are insufficient to warrant reopening appellant's claim for further merit review.

Dr. Ceicys' MRI scan report demonstrated a normal lumbosacral spine. This evidence does not address the relevant medical evidence of whether appellant had any continuing residuals or disability causally related to her April 10, 2000 employment-related conditions. Evidence which is irrelevant to the claim is insufficient to warrant a merit review of the case.<sup>7</sup> For this

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002); *Ricky S. Storms*, 52 ECAB 349, 353 (2001).

<sup>6</sup> *Freddie Mosley*, 54 ECAB 255 (2002); *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>7</sup> *Mark H. Dever*, 53 ECAB 710 (2002).

reason, the Board finds that Dr. Ceicys' report is irrelevant and, therefore, insufficient to warrant reopening appellant's claim for further merit review.

Appellant did not submit any relevant or pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she 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. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.<sup>8</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2006 decision of Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See *James E. Norris*, *supra* note 6.