

FACTUAL HISTORY

This is the sixth appeal before the Board in this case. Under file number 160298285,² the Office accepted that appellant developed tenosynovitis of the right and left wrist, ganglion of the right wrist and right rotator cuff syndrome as a result of her employment duties as a logistics management specialist at Tinker Air Force Base. Under file number 160353380, the Office accepted that appellant sustained a left shoulder impingement and recurrent ganglia of the left wrist as a result of her employment duties as an assistant bank examiner for the Department of the Treasury.³ The record reflects that appellant retired from federal employment and, as of July 26, 2005, was in receipt of workers' compensation benefits.

Appellant initially filed an appeal with the Board on February 14, 2002 regarding the denial of her claim under file number 160353380. By order dated July 30, 2002,⁴ the Board remanded the case to consolidate her two case records, reconstruct the file and issue an appropriate decision based on the entire record. In an October 16, 2002 decision, the Office terminated appellant's compensation benefits relying on the opinion of Dr. Ghazi M. Rayan, a Board-certified orthopedic surgeon, who served as an impartial medical examiner. In an April 22, 2003 decision, the Board set aside the Office's October 16, 2002 decision due to an incomplete record and remanded the case for proper assemblage of the record and an appropriate decision.⁵ In an August 21, 2003 decision, the Office terminated appellant's compensation effective May 20, 2001 again relying on the impartial medical opinion of Dr. Rayan. In a February 27, 2004 decision,⁶ the Board reversed the Office's decision on the grounds that the report of Dr. Rayan was not sufficient to resolve the medical conflict regarding appellant's employment-related residuals. By decision dated May 19, 2004, the Office terminated appellant's compensation effective June 12, 2004 based on Dr. Rayan's supplemental report. In a March 21, 2005 decision, the Board reversed the Office's decision on the grounds that Dr. Rayan did not resolve the medical conflict regarding appellant's employment-related residuals.⁷ In an August 8, 2006 decision, the Board affirmed an October 31, 2005 decision terminating appellant's compensation benefits effective November 26, 2005 based on the opinion of Dr. Robert Holladay, a Board-certified orthopedic surgeon, who found that appellant no longer had any disability or residuals due to her accepted work-related conditions. The Board

² On May 27, 1997 appellant, then a 38-year-old logistics management specialist, filed an occupational disease claim alleging that her carpal tunnel syndrome, ganglion cyst and right thumb extensor tenosynovitis were employment related.

³ On April 20, 2000 appellant filed an occupational disease claim alleging that her left shoulder impingement syndrome was employment related.

⁴ Docket No. 02-899 (issued July 30, 2002).

⁵ Docket No. 03-679 (issued April 22, 2003).

⁶ Docket No. 04-230 (issued February 27, 2004).

⁷ Docket No. 05-42 (issued March 21, 2005). The Board notes that appellant had filed a second appeal of the Office's May 19, 2004 termination decision and was assigned a separate docket number. In an order dismissing appeal dated December 15, 2004, the Board dismissed the later docket number as two docket numbers had been assigned to the Office's May 19, 2004 decision. Docket No. 05-93 (issued December 15, 2004).

also found the report by Dr. John W. Ellis, an attending Board-certified family practitioner, was insufficient to create a conflict with Dr. Holladay's report as Dr. Ellis failed to provide any supporting medical rationale for his conclusions regarding appellant's physical limitations and how her current medical condition was related to her employment injuries. The facts and history of the case, as set forth in the Board's decisions, are incorporated herein by reference.

On October 18, 2006 and January 25, 2007 appellant requested reconsideration before the Office. She reiterated her argument that the Office did not follow the correct procedures in selecting Dr. Holladay as the impartial medical specialist. Appellant again claimed that the Office improperly bypassed over 480 Board-certified orthopedic physicians located in her zip code and adjacent zip codes closer to her home than Dr. Holladay whose office was located over 200 miles away. In a January 8, 2007 report, Dr. Ellis noted appellant's past medical history, her employment injury history and her current complaints of discomfort, pain, tightness and stiffness in her upper extremities and lower and middle back areas and examination findings. He diagnosed right wrist ganglion cyst, status post surgical removal; left wrist ganglion cyst postsurgical removal with recurrent cysts requiring additional surgeries; bilateral wrist strain/tendinitis; improving bilateral de Quervain's syndrome; bilateral carpal tunnel syndrome; bilateral medial and lateral epicondylitis; bilateral rotator cuff syndrome; bilateral shoulder impingement syndrome; bilateral forearm strain/tendinitis; improving bilateral forearm muscle strain/tendinitis; improving bilateral radial tunnel syndrome; and chronic pain and depression related to the above-mentioned diagnoses. Dr. Ellis opined that appellant was entitled to medical disability retirement.

By decision dated March 9, 2007, the Office denied further reconsideration of the merits.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁸ 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.⁹ 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.¹⁰ 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.¹¹

⁸ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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).

⁹ 20 C.F.R. § 10.606(b)(1)-(2). *See Susan A. Filkins*, 57 ECAB 630 (2006).

¹⁰ *Id.* at § 10.607(a).

¹¹ 20 C.F.R. § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements, the Office will deny the application for review without reviewing the merits of the claim).

ANALYSIS

The only decision before the Board in this appeal is the March 9, 2007 decision denying appellant's application for review. The last merit decision was the Board's August 8, 2006 decision, which affirmed an October 31, 2005 Office decision terminating appellant's compensation benefits. In her reconsideration requests, appellant reiterated her contention that the Office failed to follow its procedures when Dr. Holladay was selected as the referee medical specialist. This argument was previously considered and rejected in the Board's August 8, 2006 decision. Appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant was not entitled to a review of the merits of her claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

With respect to the third above-noted requirement under 20 C.F.R. § 10.606(b)(2), appellant submitted a January 8, 2007 report from Dr. Ellis, who noted that her medical history, complaints and findings on examination. Dr. Ellis opined that appellant was entitled to medical retirement disability. His report did not provide any opinion addressing how appellant's current condition and physical limitations were causally related to her accepted employment injuries, the underlying issue in this case. Thus, this report is irrelevant.¹² This report is therefore insufficient to warrant further merit review. As appellant did not submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied her reconsideration request by its decision dated March 9, 2007.

CONCLUSION

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

¹² See *Betty A. Butler*, 56 ECAB 545 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 9, 2007 be affirmed.

Issued: May 20, 2008
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