United States Department of Labor
Employees' Compensation Appeals Board

L.P, Appellant	)	
and	)	**Docket No. 08-1141**
	)	**Issued: September 22, 2008**
DEPARTMENT OF THE AIR FORCE, SHEPPARD AIR FORCE BASE, TX, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2008 appellant timely appealed the February 21, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the only decision properly before the Board is the Office's February 21, 2008 nonmerit decision.[1]

ISSUE

The issue is whether the Office properly denied appellant's February 1, 2008 request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case was previously before the Board. Appellant, a 77-year-old former office automation clerk, has an accepted claim for head contusion, left knee strain and left lateral

[1] As discussed *infra*, the latest merit decision in the case was issued by the Board on January 25, 2008. Appellant may request reconsideration before the Board, but there is not right to appeal a final Board decision. *See* 20 C.F.R. §§ 501.6, 501.7 (2008).

meniscus tear, which arose on December 15, 1995. Following her injury, appellant worked in a light-duty capacity as an office automation clerk, with no decrease in pay. Appellant continued to work in this capacity until she resigned effective August 22, 1997. On November 17, 1997 the Office found that appellant's actual earnings as an office automation clerk beginning June 22, 1997 fairly and reasonably represented her wage-earning capacity. Because appellant's actual earnings equaled or exceed the adjusted wages of her date-of-injury position, she had no loss in wage-earning capacity. As such, she was not entitled to receive wage-loss compensation. When the case was last on appeal, the Board affirmed the Office's March 8, 2007 decision denying modification of the November 17, 1997 wage-earning capacity determination.[2] The Board's latest decision, dated January 25, 2008, is incorporated herein by reference.[3]

On February 1, 2008 appellant requested reconsideration before the Office. She argued that she did not voluntarily resign her position on August 22, 1997. Appellant also submitted copies of standard form (SF) 50-B (notification of personnel action) and SF 52 (request for personnel action) from March 1996 and August 1997.

In a decision dated February 21, 2008, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

The Office has the discretion to reopen a case for review on the merits.[4] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[5] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

ANALYSIS

Appellant has argued on more than one occasion that her August 22, 1997 resignation was either unintentional or coerced, but other than her repeated allegations, there is nothing in the record to suggest that appellant's August 22, 1997 resignation was involuntary or unknowing. Her February 1, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant

[2] Modification of a wage-earning capacity determination is unwarranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was erroneous. *Tamra McCauley*, 51 ECAB 375, 377 (2000). The burden of proof is on the party seeking modification. *Id.*

[3] Docket No. 07-1388 (issued January 25, 2008).

[4] 5 U.S.C. § 8128(a) (2000).

[5] 20 C.F.R. § 10.606(b)(2).

[6] 20 C.F.R. § 10.608(b).

did not advance a relevant legal argument not previously considered by the Office. Therefore, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[7] Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence with her February 1, 2008 request for reconsideration. The record already included ample evidence regarding the March 1996 and August 1997 personnel actions.[8] Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).[9]

CONCLUSION

The Board finds that the Office properly denied appellant's February 1, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[7] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[8] Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim. *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

[9] 20 C.F.R. § 10.606(b)(2)(iii).