

On November 30, 2007 appellant filed a claim for wage-loss compensation (Form CA-7a) for the period May 24 to October 31, 2007. Time analysis forms indicated that she was on leave without pay from May 18 to 31, 2007 and September 1 to November 9, 2007. In disability certificates dated June 29, July 31, August 31, October 2, November 1 and December 3, 2007 and January 3, 2008, Dr. Timothy Young, an attending Board-certified orthopedic surgeon, stated that appellant was totally disabled for work from May 22, 2007 to January 29, 2008. In progress notes dated October 31 and December 11, 2006 and March 8 and April 10, 2007, he advised that appellant suffered from rotator cuff syndrome not otherwise specified, unspecified neuralgia, neuritis and radiculitis, and lumbar and sacral arthritis. In prescriptions dated October 11, 2007, Dr. Young stated that appellant was being treated for a neuromuscular condition of the shoulder and lower back. She was not able to work from October 1 to 30, 2007.

By letter dated December 7, 2007, the Office advised appellant that it had received her claim for compensation for the period May 18 to 31, 2007 and September 1 to November 9, 2007. As it had already paid compensation for the period May 13 to 29, 2007 by check dated August 10, 2007, it noted that the employing establishment had not reported any wage loss as of May 31, 2007. The Office determined that no further action would be taken on appellant's claim for the previously paid period. It advised her that the evidence submitted was insufficient to establish her claim for compensation for the period September 1 to November 9, 2007. The Office addressed the factual and medical evidence appellant needed to submit.

In a January 25, 2008 report, Dr. Young advised that appellant continued to experience symptoms related to her rotator cuff injury due to overuse and repetitive movements at work.

By decision dated February 12, 2008, the Office denied appellant's claim. The medical evidence was found insufficient to establish that she was totally disabled from September 1 to November 9, 2007 causally related to her September 1, 2006 employment-related injuries.

A September 1, 2006 chest x-ray report of Dr. Stuart M. Jacobson, a Board-certified radiologist, provided essentially normal findings with the exception of mild scoliotic curvature of the thoracic spine.

In a February 19, 2008 letter, appellant requested reconsideration of the February 12, 2008 decision. She resubmitted a September 1, 2006 report from Dr. J. Ernest Reed, Board-certified in emergency medicine, and Dr. Young's medical records. In a September 12, 2006 progress note, Dr. Young advised that appellant complained about having severe muscle strain in the neck and back after performing her work duties and that she was unable to work from September 1 to 5, 2006. He reported normal findings on physical and psychological examination. In a February 25, 2008 disability certificate, Dr. Young stated that appellant was totally disabled for work from February 1 to 27, 2008. The employing establishment's January 31, 2008 offer for a modified mail handler position was accepted by appellant on that date.

By decision dated April 9, 2008, the Office denied appellant's request for reconsideration. The evidence submitted was found repetitious and immaterial in nature and insufficient to warrant further merit review of appellant's claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹ the Office's regulation 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.² 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.³ 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

On February 19, 2008 appellant disagreed with the Office's February 12, 2008 decision which denied wage-loss compensation for total disability for the period September 1 to November 9, 2007. The relevant issue of whether she was totally disabled from September 1 to November 9, 2007 due to her accepted September 1, 2006 employment injuries is medical in nature.

Appellant resubmitted Dr. Reed's September 1, 2006 report and medical evidence from Dr. Young dated March 8, 2007 to January 25, 2008. However, the resubmission of this evidence does not require reopening of her claim for merit review because it was previously considered by the Office. The Board has held that evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.⁴

Dr. Young's September 12, 2006 progress note reported appellant's inability to work from September 1 to 5, 2006. His February 25, 2008 disability certificate stated that appellant was totally disabled for work from February 1 to 27, 2008. Dr. Jacobson's September 1, 2006 chest x-ray report revealed mild scoliotic curvature of the thoracic spine. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ Neither Dr. Young nor Dr. Jacobson provided a medical opinion addressing the relevant issue of whether appellant was totally disabled from September 1 to November 9, 2007 due to her September 1, 2006 employment injuries. The Board finds that this evidence is insufficient to reopen appellant's claim for further merit review.

¹ 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).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

⁴ See *L.H.*, 59 ECAB ___ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

⁵ *D'Wayne Avila*, 57 ECAB 642 (2006).

Appellant submitted a copy of her January 31, 2008 acceptance of the employing establishment's offer for a modified mail handler position. As the issue in this case is medical in nature, the factual evidence submitted by appellant is not relevant and insufficient to warrant further merit review.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁶

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2009
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

⁶ See 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).