United States Department of Labor
Employees' Compensation Appeals Board

I.P., Appellant	)	
and	)	**Docket No. 08-1800**
	)	**Issued: January 14, 2009**
DEPARTMENT OF THE NAVY,	)	
SAN FRANCISO NAVAL SHIPYARD,	)	
San Francisco, CA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal of a May 14, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated April 2, 2007 and the filing of the appeal, the Board lacks jurisdiction to review the merits of his claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. In a November 30, 2006 decision, the Board affirmed the Office's September 12, 2005 merit decision, finding that appellant failed to establish that his current back condition and resultant disability were causally related to his

accepted September 15, 1959 employment-related injuries.[1] The Board also affirmed the Office's November 16, 2005 nonmerit decision, denying his request for a review of the written record by an Office hearing representative. The Board found that he failed to submit rationalized medical evidence establishing a causal relationship between his claimed condition and disability and his accepted employment injuries. The Board also found that appellant was neither entitled to a hearing nor a review of the written record as a matter of right since his claim involved an injury sustained prior to the enactment of the 1966 amendments to the Federal Employees' Compensation Act. The Board determined that the Office properly denied appellant a discretionary hearing on the grounds that the issue could equally well be addressed on reconsideration. In an October 1, 2007 decision, the Board affirmed the Office's April 2, 2007 decision, which again found that appellant failed to establish that his current back condition and resultant disability were causally related to his September 15, 1959 employment-related injuries.[2] The facts and the history relevant to the present appeal are hereafter set forth.[3]

By letter dated February 19, 2008, appellant requested reconsideration of the Office's April 2, 2007 decision. He resubmitted a September 15, 1959 medical report from a physician whose signature is illegible which stated that appellant sustained a contusion and an abrasion on that date. Appellant resubmitted a December 1, 1965 report of Dr. V.E. Kaufman, an employing establishment physician, who stated that there were definite changes in appellant's back, between 1959 and 1961 based on his findings on physical examination and review of x-ray test results. Dr. Kaufman, however, stated that there was obviously some type of preexisting disease process which existed prior to appellant's 1959 employment injury. He was unable to determine whether the advance in the pathological process in the intervening two years was due to the direct blow aggravating appellant's condition.

In a May 14, 2008 decision, the Office denied appellant's request for reconsideration of the merits on the grounds that the evidence submitted was repetitious in nature and insufficient to warrant further merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Act,[4] the Office's regulation provides 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

[1] Docket No. 06-1652 (issued November 30, 2006).

[2] Docket No. 07-1304 (issued October 1, 2007).

[3] On June 12, 2005 appellant, then a 67-year-old boilermaker, filed a claim for an occupational disease that was ultimately treated by the Office as a traumatic injury claim. On September 15, 1959 he sustained a back injury when a sailor dropped a valve from 10 feet above onto his back. The Office accepted the claim for back contusion and abrasion.

[4] 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).

previously considered by the Office.[5] 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.[6] 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

In a February 19, 2008 letter, appellant disagreed with the Office's April 2, 2007 decision finding that he failed to establish that his current back condition and resultant disability were causally related to his accepted September 15, 1959 employment-related injuries. The relevant issue in the case, whether appellant's current back condition and resultant disability were due to his accepted employment injuries, is medical in nature.

The September 15, 1959 report, from a physician whose signature is illegible, stated that appellant sustained a contusion and an abrasion on that date. Dr. Kaufman's December 1, 1965 report stated that there were definite changes in appellant's back, between 1959 and 1961 based on his physical examination findings and review of x-ray test results. He, however, related that there was obviously some type of preexisting disease process which existed prior to appellant's 1959 employment injury. Dr. Kaufman stated that he was unable to determine whether the advance in the pathological process in the intervening two years was due to the direct blow aggravating appellant's condition. 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.[7] Both the September 15, 1959 report and the December 1, 1965 report of Dr. Kaufman were previously of record and considered by the Office in its prior decision. The reports do not constitute relevant and pertinent new evidence not previously considered by the Office.

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 he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.[8]

CONCLUSION

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

[5] 20 C.F.R. § 10.606(b)(1)-(2).

[6] *Id.* at § 10.607(a).

[7] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

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

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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