United States Department of Labor Employees' Compensation Appeals Board

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R.K., Appellant)	
and	/	No. 09-1920 April 14, 2010
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Yosemite, CA,) issued.	April 14, 2010
Employer)	
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitte	ed on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge MICHAEL E. GROOM, Alternate Judge JAMES A. HAYNES, Alternate Judge

<u>JURISDICTION</u>

On July 21, 2009 appellant filed a timely appeal from a March 10, 2009 nonmerit decision of the Office of Workers' Compensation Programs. As the most recent merit decision was issued on December 9, 2008, more than 180 days prior to the filing of this appeal, pursuant to 20 C.F.R. § 501.3(e), the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

On December 6, 1999 appellant, a 56-year-old telecommunications specialist, injured his lower back. He filed a claim for benefits, which the Office accepted for lumbar sprain and aggravation of degenerative disc disease at L5-S1. On September 5, 2003 the Office granted appellant a schedule award for a 15 percent permanent impairment of the right lower extremity. This decision was vacated on June 1, 2004.

In a November 20, 2007 report, Dr. Allan R. Wilson, a second opinion physician Board-certified in orthopedic surgery, found that appellant had a three percent right lower extremity impairment. In a January 28, 2008 report, an Office medical adviser reviewed Dr. Wilson's report and concurred with his opinion that appellant had a three percent impairment of the right leg.

By decision dated March 28, 2008, the Office granted appellant a schedule award for three percent permanent impairment of the right leg. The award ran from November 20, 2007 to January 19, 2008, or a total of 8.64 weeks of compensation.

On April 15, 2008 appellant requested an oral hearing, which was held on September 12, 2008.

In an undated report, received by the Office on October 27, 2008, Dr. Robin J. DeLeon, a physical and rehabilitative medicine specialist, stated that he was treating appellant for back pain. He did not provide any impairment rating.

By decision dated December 9, 2008, an Office hearing representative affirmed the March 28, 2008 Office decision.

By letter dated January 12, 2009, appellant requested reconsideration. He did not submit any additional medical evidence with his request.

By decision dated March 10, 2009, the Office denied appellant's request for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously 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.²

ANALYSIS

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He has not advanced a relevant legal argument not previously considered by the Office. Appellant did not submit any new medical evidence in connection with his January 12, 2009 request, which addresses the underlying issue of whether he has greater impairment of the right lower extremity. His reconsideration request failed to show that the Office erroneously

¹ 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

² Howard A. Williams, 45 ECAB 853 (1994).

applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has no more than a three percent impairment of the right lower extremity. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 14, 2010 Washington, DC

> David S. Gerson, Judge Employees' Compensation Appeals Board

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

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