United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 10-686**
	)	**Issued: December 13, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 14, 2010 appellant filed a timely appeal from a July 30, 2009 decision of the Office of Workers' Compensation Programs which denied her request for reconsideration. Because more than 180 days elapsed since the most recent merit decision dated May 1, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On October 29, 2006 appellant, then a 40-year-old mail handler, developed low back pain when she was pushing wire containers. The Office accepted her claim for lumbosacral strain. Appellant stopped work on October 29, 2006 and returned to part-time limited duty, four hours a

day on November 8, 2006. She worked intermittently thereafter until becoming totally disabled on January 22, 2007.[1]

Dr. Karen Berger, a Board-certified family practitioner, treated appellant from January 29 to March 8, 2007. She diagnosed thoracic and lumbar back strain with possible compression fracture due to the October 29, 2006 work injury. On May 31, 2007 appellant was treated by Dr. Nathan J. Rudin, a Board-certified orthopedic surgeon, for chronic back pain and limb numbness which occurred after the incident on October 29, 2006 at work. Dr. Rudin diagnosed exacerbation of preexisting degenerative thoracic vertebral disease and lumbar pain related to the injury of October 2006. He returned appellant to work full time with restrictions.

The Office referred appellant to Dr. Paul Cederberg, a second opinion physician, who disagreed with appellant's physicians regarding the extent of her condition and disability. Dr. Cederberg found that she did not have a lumbar strain and that her thoracic condition had not totally resolved. In reports dated August 9 and September 27, 2007, Dr. Lawrence Frazin, a Board-certified neurosurgeon, selected as the impartial medical specialist, opined that appellant's work-related injury had resolved and she could return to her preinjury job, full time without restrictions.

On October 23, 2007 the Office issued a notice of proposed termination of compensation benefits based on Dr. Frazin's reports. Appellant disagreed and submitted reports from Dr. Michael DiMarco, Jr., a psychologist, dated July 12 and August 6, 2007.

In a November 30, 2007 decision, the Office terminated appellant's compensation benefits effective that day for the accepted condition of lumbosacral strain on the grounds that the weight of the medical evidence established that she had no disability or residuals resulting from her accepted injury.

On September 25, 2008 appellant requested reconsideration and submitted reports from Dr. Rudin dated November 7, 2007 to September 12, 2008. Dr. Rudin treated her for chronic midthoracic pain and mild degenerative disc disease. He opined that appellant's condition was secondary to somatic dysfunction and myofascial pain in the midthoracic region with no evidence of neurological abnormalities. In a May 22, 2008 estimate of physical capabilities, Dr. Rudin diagnosed work-related mechanical pain at T5 to T7 and low back pain. He returned appellant to work full time with restrictions. In an attending physician's report dated June 17, 2008, Dr. Rudin diagnosed thoracic strain, chronic with poor mobility, spasm and myofascial pain disease and noted with a checkmark "yes" that appellant's condition was caused or aggravated by a work activity on October 29, 2006. He found appellant was totally disabled from October 29, 2006 to February 11, 2007 and partially disabled from February 12, 2007. On September 12, 2008 Dr. Rudin diagnosed chronic midthoracic back and chest pain which began after her work injury. He advised that appellant's continuous pain limited her ability to work. Dr. Rudin opined that within a reasonable degree of medical certainty appellant's pain was related to her work injury. He noted no evidence of fracture or other bony abnormality in the thoracic spine beyond degenerative disc disease of a degree appropriate for her age. Dr. Rudin

[1] The record reveals that on May 15, 2008 appellant filed a duplicate claim regarding the same matter. The Office administratively deleted the claim.

opined that appellant's symptoms were permanent and recommended a return to work with restrictions.

In a decision dated December 3, 2008, the Office denied modification of the November 30, 2007 decision.

On April 1, 2009 appellant requested reconsideration and submitted additional medical evidence.

In a decision dated May 1, 2009, the Office denied modification of the prior decision.

On May 7, 2009 appellant requested reconsideration. In an undated statement, she requested that the Office review all documents in her case. Appellant asserted that the Office distorted the facts so that it appeared she was not injured. She advised that she was diagnosed with a fractured vertebrae and disc and believed the referee physician did not thoroughly review her diagnostic tests. Appellant asserted that she had a fractured thoracic vertebrae and a torn disc that required surgery. She contended that she was not adequately compensated by the Office for her injury and that her x-rays and an MRI scan were tampered with. In a May 27, 2009 report, Dr. Rudin noted that he terminated the doctor-patient relationship with appellant on October 28, 2008. He advised that he did not have any new data upon which to base a disability determination and that his prior disability certification of October 23, 2008 remained valid. Appellant also resubmitted prior reports of Dr. Rudin.

In a July 30, 2009 decision, the Office denied appellant's reconsideration request on the grounds that her request was insufficient to warrant further review of the merits.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(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]."[3]

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[4]

ANALYSIS

The Office's July 30, 2009 decision denied appellant's reconsideration request finding that it was insufficient to warrant further merit review. With her request, she asserted that the Office distorted the facts in her claim so that it appeared as though she was not injured. Appellant disputed the findings of the referee physician who she contended did not thoroughly review her records. While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[5] The Board finds that the general allegations of improper conduct by the Office have no reasonable color of validity. Appellant provided no evidence to support her assertions.[6] Her letter did not establish that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered.

Appellant resubmitted the May 22, 2008 physical capabilities form and the June 17, 2008 attending physician's report prepared by Dr. Rudin. The Board notes that this evidence is duplicative of evidence already of record and previously considered by the Office in its December 3, 2008 decision.[7] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. In a May 27, 2009 report, Dr. Rudin addressed terminating the doctor-patient relationship with appellant on October 28, 2008. He did not have any new information upon which to base a disability determination and noted his prior disability certification remained valid. This evidence, while new, is not relevant to the underlying issue in the claim, the termination of benefits based on appellant's accepted lumbar strain. Dr. Rudin merely referenced his previous reports on the matter. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant also submitted a May 7, 2009 letter to the Secretary of Labor requesting assistance with her claim; but it is not relevant to the underlying issue, the termination of benefits, which is medical in nature. Her letter asserted her allegations that the Office had not properly developed or adjudicated her claim. Appellant did not otherwise submit any new and relevant medical evidence following the Office's May 1, 2009 decision.

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[4] *Id.* at § 10.608(b).

[5] *L.G.*, 61 ECAB ___ (Docket No. 09-1517, issued March 3, 2010).

[6] Appellant submitted a May 7, 2009 letter to the Secretary of Labor but this letter generally repeated her allegations that her claim had not been properly developed and adjudicated by the Office.

[7] 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim as she did not present evidence or argument satisfying any of the three regulatory criteria, under section 10.606(b)(2), for obtaining a merit review.

On appeal appellant asserts that the Office failed to expand her claim to include additional diagnoses to her middle back and indicated that she sustained a rib ring fracture and a compression fracture at T5. She contended that medical records were improperly removed from her claim file. The Board only has jurisdiction over whether the Office properly denied a further merit review of the claim. As noted, appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.[8]

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[8] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).