

FACTUAL HISTORY

On December 7, 2005 appellant, then a 48-year-old mail processor filed a Form CA-2a, notice of recurrence of disability, in claim number xxxxxx877, alleging that on October 20, 2005 she had a recurrence of foot and leg pain causally related to her accepted work injury. In a memorandum dated December 23, 2005, the Office determined that appellant alleged a new occupational disease claim and that her claim would be developed as an occupational disease and not a recurrence of disability. On January 27, 2006 it accepted appellant's claim for aggravation of bilateral plantar fasciitis and expanded her claim to include bilateral edema in the lower extremities, right leg sciatica and right leg bacterium. On January 23, 2008 appellant was granted disability retirement.

On June 25, 2008 appellant was hospitalized for right leg abscess and cellulitis with fasciitis and underwent incision and debridement of the right leg wound. She was diagnosed with morbid obesity and plantar fasciitis. In reports dated January 12 and May 4, 2009, Dr. H. Fred Preuss, Jr., a podiatrist, treated appellant for Achilles tendon pain and diagnosed tenosynovitis, bilateral Achilles and swelling of the bilateral feet. Appellant was treated by Dr. Raymond G. Shea, a Board-certified orthopedist, from June 4 to 26, 2009, for back and left buttock pain which started at work on October 20, 2005. He diagnosed degenerative disc disease of the lumbar spine. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed no abnormalities.

Thereafter, the Office referred appellant to a second opinion physician and also to an impartial medical examiner with regard to her ability to work. The impartial medical examiner opined that appellant's work-related conditions had resolved and she had no restrictions related to her accepted work injury.

On September 29, 2009 the Office proposed to terminate compensation benefits on the grounds that the referee physician established that residuals of the work-related conditions had ceased.

Appellant submitted a June 14, 2009 report from Dr. William H. Haney, a Board-certified internist, who treated her for edema. Also submitted was a June 22, 2009 statement from Dr. Shea who noted treating appellant for a work-related injury. In a treatment note dated June 22, 2009, Dr. Shea advised that appellant presented with pain and discomfort in the buttock area. He noted straight leg testing was negative and reflexes were intact. Dr. Shea referred appellant for an MRI scan of the pelvis and a surgical consultation. In July 23, 2009 reports, he noted seeing appellant for evaluation of a work-related injury. Dr. Shea indicated that appellant had been off work since 2005. He stated that appellant stood on a mat at work for 10 years and, as a result, had pain in her back, legs and feet. Dr. Shea noted that appellant had multiple evaluations including MRI scans and an EMG which were all normal. He advised that appellant was not a candidate for back or hip surgery. Dr. Shea opined that appellant was totally disabled and this was due to her workers' compensation injury. Appellant was also treated by Dr. Preuss on July 6 and 13, 2009 for foot and leg pain.

In a decision dated September 25, 2009, the Office terminated appellant's compensation benefits effective September 25, 2009 for the accepted conditions of aggravation of bilateral

plantar fasciitis, bilateral edema in the lower extremities, right leg sciatica and right leg bacterium on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his accepted employment injuries.

On October 24, 2009 appellant requested reconsideration. She submitted reports from Dr. Shea dated June 22 and July 23, 2009, previously of record. Also submitted was an August 17, 2009 report from Dr. Haney who treated appellant for left hip pain. In a decision dated December 15, 2009, the Office denied modification of the September 25, 2009 Office decision.

On January 12, 2010 appellant requested reconsideration. She submitted reports from Dr. Preuss dated November 18 and December 28, 2009 who treated her for bilateral plantar fasciitis. In a decision dated February 12, 2010, the Office denied modification of the prior decision.

On March 8, 2010 appellant requested reconsideration. She submitted a June 23, 2008 venous evaluation which revealed no abnormalities. Appellant also submitted a February 26, 2010 report from Dr. Shea who diagnosed trochanteric bursitis of the left hip and recommended a cortisone injection. Also submitted was a February 24, 2010 report from Dr. Preuss who diagnosed bilateral plantar fasciitis. In a decision dated April 21, 2010, the Office denied modification of the prior decision.

Appellant requested reconsideration and submitted notes from Dr. Stephen Makk, a Board-certified orthopedist, dated January 4 to March 24, 2010, who diagnosed trochanteric bursitis of the left hip. Also submitted was a February 26, 2010 report from Dr. Shea who noted symptoms of irritation of the sciatic nerve and diagnosed trochanteric bursitis of the left hip. Appellant submitted physical therapy notes dated March 24, 2010.

In a decision dated May 7, 2010, the Office denied modification of the prior decision.

On May 21, 2010 appellant requested reconsideration. In a statement of the same date, she asserted that she continued to be treated by Dr. Preuss for plantar fasciitis and edema since 2005. Appellant noted that she still experienced sciatica which was a consequence of her limping from the plantar fasciitis. She asserted that Dr. Shea determined that these conditions were related to the October 20, 2005 work injury. Appellant submitted a May 11, 2010 statement from Dr. Shea who noted her trochanteric bursitis was not the result of her work-related injury of October 20, 2005. In a May 17, 2010 report, Dr. Shea noted that appellant worked at the employing establishment for 10 years and in 2005 was diagnosed with plantar fasciitis which caused her to limp. He noted that since that time appellant experienced low back pain and had not worked since one month after her injury in 2005. Dr. Shea noted that the June 12, 2009 MRI scan of the lumbar spine was normal. He injected cortisone into the area of tenderness in the left lower back. Dr. Shea opined that appellant's current treatment was based on her workers' compensation injury.

In a June 11, 2010 decision, the Office denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,³ 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 provides 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 which:

“(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].”⁴

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.⁵

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁶

ANALYSIS

The Office terminated appellant’s compensation and medical benefits on September 25, 2009 for the conditions of aggravation of bilateral plantar fasciitis, bilateral edema in the lower extremities, right leg sciatica and right leg bacterium based on the opinion of a referee physician. The referee physician opined that appellant’s work-related conditions ceased and she had no work restrictions related to her accepted conditions. The Office denied appellant’s May 21, 2010 reconsideration request, without a merit review, and appellant appealed this decision to the Board. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring the Office to reopen the case for review of the merits of the claim.

In her May 21, 2010 application for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She asserted that she still had residuals of her work-related

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

⁶ *See Daniel Deparini*, 44 ECAB 657 (1993).

conditions of plantar fasciitis, edema and sciatica and was still being treated by Drs. Preuss and Shea for these conditions. The underlying issue in this case was whether appellant had residuals of her accepted conditions. That is a medical issue which must be addressed by relevant medical evidence.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case. Dr. Shea's May 11, 2010 statement is new but it is not relevant because he stated that appellant's trochanteric bursitis was not the result of her work injury. Similarly, his note of May 17, 2010 indicated that appellant worked at the employing establishment for 10 years and in 2005 was diagnosed with plantar fasciitis which caused her to limp. Dr. Shea noted that since that time appellant experienced low back pain and had not worked since one month after her injury in 2005. He opined that appellant's current treatment was based on her workers' compensation injury. Although this report provides some support for causal relationship, it is not relevant because it is duplicative of Dr. Shea's June 22 and July 23, 2009 reports, previously of record and previously considered by the Office, which supported causal relationship.⁸ For example, in his July 23, 2009 reports, Dr. Shea noted treating appellant for a work-related injury. He noted that appellant stood on a mat at work for 10 years and, as a result, had pain in her back, legs and feet and had been off work since 2005. Dr. Shea opined that appellant was totally disabled, this was due to her workers' compensation injury. As his May 17, 2010 report repeats the same information regarding causal relationship as contained in his previously considered reports, the Office properly determined that this evidence was cumulative and did not constitute a basis for reopening the case for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

CONCLUSION

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

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ 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*, *supra* note 6; *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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