

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
FRANKIE C. YOUNGUE, Appellant)
))
and)
))
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, REGIONAL OFFICE, Detroit, MI,)
Employer)
_____)

**Docket No. 03-1875
 Issued: December 18, 2003**

Appearances:
Frankie C. Youngue, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
 COLLEEN DUFFY KIKO, Member
 DAVID S. GERSON, Alternate Member

JURISDICTION

On February 26, 2003 appellant, filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 17, 2002 in which the Office denied appellant's request for a merit review. The most recent merit decision was a July 13, 2001 decision of the Board which, as the only decision filed within one year from the date of appeal, is the nonmerit decision of September 17, 2002, the Board has jurisdiction to review such decision under 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue on appeal is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case is before the Board for the third time. In the first appeal, by decision dated March 9, 1998, the Board reversed a September 18, 1995 termination decision of the Office.¹ On appeal for the second time, in a decision dated July 13, 2001, the Board affirmed the Office's August 27, 1999 decision which terminated appellant's compensation effective August 27, 1999.² The findings of fact and the conclusions of law from the prior decisions are hereby incorporated by reference.

In a letter dated May 28, 2002, appellant requested reconsideration of the last merit decision, the Board's July 13, 2001 decision. She provided several written statements describing her experience with the Office, copies of prior Office decisions, some marked with notes in the margins, several medical reports from Dr. Robert S. Barbosa, an orthopedic surgeon specializing in hand surgery and appellant's new attending physician, dated September 24, 2001 through July 22, 2002 which noted appellant's treatment and contained the diagnoses of first carpometacarpal joint osteoarthritis and right wrist arthritis and medical evidence previously of record.³

By decision dated September 17, 2002, the Office denied appellant's application for review finding that the evidence submitted lacked probative value and was immaterial to the issue of whether appellant had any continued disability due to the accepted work injury.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁶

¹ Docket No. 96-475 (issued March 9, 1998).

² Docket No. 00-340 (issued July 13, 2001).

³ Evidence duplicative of that in the record included: January 29, 1998, March 2 and May 4, 1999 medial reports from Dr. Walter L. Everett, a Board-certified orthopedic surgeon and March 1, 1999 physical therapy notes.

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

⁶ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

ANALYSIS

In the present case, the Office denied appellant's claim, without conducting a merit review, on the grounds that the evidence submitted lacked probative value and was immaterial to the issue of whether appellant had any continued disability due to the accepted work injury.⁷ In her May 28, 2002 reconsideration request and in her written statements, appellant related her experiences with the Office. These statements, however, fail to show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office.⁸ Thus, appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, the Board has long held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁹ Appellant submitted numerous medical reports from Dr. Barbosa covering the period September 24, 2001 through July 22, 2002. These reports, although new, are irrelevant to the issue at hand as they fail to address the relevant issue of whether appellant had any continued disability due to the accepted work injury. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2). Appellant is, therefore, not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁷ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits. *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992). As the Board found in the prior appeal, the Office met its burden to justify the termination of compensation effective August 27, 1999. The burden of proof, therefore, shifts to appellant to establish the element of causal relationship and, thereby, establish entitlement to continuing compensation benefits.

⁸ *See Robert P. Mitchell*, 52 ECAB 116 (2000).

⁹ *James E. Norris*, 52 ECAB 93 (2000); *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2002 decision of the Office of Workers' Compensation Programs is affirmed.¹⁰

Issued: December 18, 2003
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁰ The Board notes that appellant submitted additional evidence following the September 17, 2002 decision and with her appeal to the Board. The Board cannot consider this evidence as its review is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).