

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

LARRY WILLIAMS, Appellant)	
)	
and)	Docket No. 05-141
)	Issued: April 19, 2005
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Fort Wayne, IN Employer)	
)	

Appearances:
Larry Williams, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 13, 2004, denying his request for reconsideration without reviewing the case on the merits. Because more than one year has elapsed between the most recent merit decision dated June 20, 2003 and the filing of this appeal on October 15, 2004, the Board lacks jurisdiction to review the merits of appellant's 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 reconsideration without reviewing the merits of his case under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 9, 2000 appellant, then a 44-year-old clerk, filed a claim for lower back and leg pain, which he attributed to the repetitive bending and lifting of magazines out of hampers.

Following a review of the evidence, the Office accepted appellant's claim for a lumbar strain with radicular symptoms.

On June 16, 2002 appellant filed a claim for a recurrent disability on or about November 1, 2001 claiming a worsening of his back condition to include a lumbar disc herniation at L4-5 and protrusion to the S1 nerve root. Appellant submitted factual and medical documentation in response to the Office's July 24, 2002 request for additional information to support the claimed recurrence.

By decision dated September 26, 2002, the Office denied the claimed recurrence of disability commencing November 1, 2001 as the medical evidence of record failed to support disability due to the February 9, 2000 work-related injury.

In a letter dated October 25, 2002, appellant requested an oral hearing, which was held on March 27, 2003. Appellant testified at the hearing and submitted additional medical evidence. By decision dated June 20, 2003, an Office hearing representative affirmed the Office's September 26, 2002 decision on the grounds that appellant failed to establish that the recurrence of the disabling condition was causally related to the accepted employment injury.

In a June 19, 2004 letter, appellant requested reconsideration of the June 20, 2003 decision. He indicated that the September 10, 2003 report from Dr. Michael R. Helms, a Board-certified family medicine practitioner, "clearly show[ed] a link between the injury suffered February 9, 2000 and the recurrences that followed in the subsequent years." In his September 10, 2003 report, Dr. Helms stated that appellant had back pain and opined that there was a link to appellant's initial injury to the problems in 2001 as well as his current problems. He also noted that appellant's chronic back problems were evidenced by the magnetic resonance imaging (MRI) scan studies and that appellant would continue to be treated in a conservative manner.

By decision dated July 13, 2004, the Office denied appellant's request for reconsideration as Dr. Helms' report was found to be insufficient and of no evidentiary value to warrant review of the June 20, 2003 decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."¹

¹ 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (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) submitting relevant and pertinent evidence not previously considered by the Office.² When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

ANALYSIS

In this case, appellant's claim for a recurrent disability on or about November 1, 2001 was denied as the medical evidence of record failed to support a causal relationship with the accepted low back strain with radicular symptoms of February 9, 2000. In his September 10, 2003 report, Dr. Helms specifically opined that appellant's back pain was linked to his initial injury as well as to the problems in 2001 and to his current problems. The issue in this case is medical and appellant submitted medical evidence, which must be reviewed and evaluated under the appropriate standard. Although the Office stated that Dr. Helms' report was insufficient and of no evidentiary value to warrant a merit review, the Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof.⁴ Because Dr. Helms' September 10, 2003 report is new evidence which supports a causal relationship between the accepted work injury of February 9, 2000, the Board finds that appellant submitted relevant and pertinent evidence not previously considered by the Office. Appellant has thus established that the Office abused its discretion in its July 13, 2004 decision by denying his request for review of its June 20, 2003 decision under section 5 U.S.C. § 8128(a) of the Act.

CONCLUSION

Under the circumstances described above, the Board finds that the Office improperly denied appellant a review on the merits and this case is remanded. On remand, the Office will reopen appellant's case for a merit review under section 8128(a) of the Act.⁵ After such further development as it may deem necessary, the Office will then issue a merit reconsideration decision.

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ *Kenneth R. Mroczkowski*, 40 ECAB 855, 858-59 (1989).

⁵ 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2004 is vacated and the case is remanded for further consideration consistent with this opinion.

Issued: April 19, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member