

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

CHARLIE E. BROWN, Appellant)

and)

**DEPARTMENT OF THE NAVY, MARE)
ISLAND NAVAL SHIPYARD, Vallejo, CA,)
Employer**)

**Docket No. 03-1866
Issued: February 3, 2005**

Appearances:

Charlie E. Brown, pro se

Thomas G. Giblin, for the Director

Oral Argument January 5, 2005

DECISION AND ORDER

Before:

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

JURISDICTION

On July 16, 2003 appellant filed a timely appeal from a nonmerit Office of Workers' Compensation Programs' decision dated July 2, 2003. Because more than one year has elapsed between the last merit decision dated January 12, 2001 and the filing of this appeal on June 6, 2003, 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 refused to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the fourth appeal before the Board. The Office accepted a claim for a reaction to the right sacroiliac area and medial right knee as occurring in the performance of duty on January 16, 1985, in addition to claims for lumbar strains on January 15, 1980 and May 2 and

November 23, 1983. Appellant was placed on the periodic rolls in March 1985 and began receiving compensation for temporary total disability. By decision dated June 16, 1993, the Office terminated appellant's compensation, effective June 27, 1993. By decision dated March 28, 1994, an Office hearing representative affirmed the Office's June 16, 1993 termination decision. In decisions dated June 2, 1997¹ and May 18, 2000,² the Board affirmed the Office's decisions. By nonmerit decision dated October 15, 1997 and merit decisions dated March 9, 1998, August 9 and 22, 2000 and January 12, 2001, the Office affirmed the termination of compensation. Following the January 12, 2001 Office decision, the Office denied reconsideration by nonmerit decisions dated April 16 and October 3, 2002. By nonmerit decision dated March 13, 2003,³ the Board affirmed the Office's April 16 and October 3, 2002 denials of reconsideration.⁴

By letter dated June 6, 2003, appellant requested reconsideration. Appellant submitted a report dated May 8, 2003 from Dr. Alexander Reynoso, a Board-certified family practitioner, who noted symptoms of chronic lumbar pain primarily in the right lumbar region, radiating down to the right upper leg. He stated that appellant has had these symptoms since a 1980 work injury, and that they have remained unchanged since the date of his injury. Dr. Reynoso stated that an electromyogram study of the lower extremities showed no radiculopathy and that an April 2, 2003 magnetic resonance imaging (MRI) scan showed desiccated L3-4 disc with bilateral lateral mild caudal foraminal narrowing, with no evidence of focal disc protrusion, central spinal or foraminal stenosis; the L4-5 and L5-S1 discs showed desiccation with small annular fissures, but no focal disc protrusion, central spinal or foraminal stenosis. Dr. Reynoso stated:

“Based on his history of lumbar back work injury with no change in back symptoms over all these years, along with physical examination revealing loss of lumbar range of motion and MRI findings correlating with chronic discogenic mechanical pain syndrome, I conclude that he has had ongoing disability since 1980 from chronic mechanical discogenic lumbar pain syndrome.”

By decision dated July 2, 2003, the Office denied appellant's request for reconsideration without a merit review, finding that appellant's request “from the last merit decision dated March 13, 2003”⁵ failed to show abuse of discretion. The Office stated that the evidence appellant submitted, *e.g.*, Dr. Reynoso's report, was cumulative and repetitive of previously submitted medical reports and therefore did not warrant merit review of the March 13, 2003 decision.

¹ Docket No. 95-755 (issued June 2, 1997).

² Docket No. 98-1824 (issued May 18, 2000).

³ Docket No. 03-168 (issued March 13, 2003).

⁴ The complete facts of this case are set forth in the Board's June 2, 1997 decision and are herein incorporated by reference.

⁵ This finding was incorrect. The Board in its March 13, 2003 decision denied two nonmerit Office decisions, issued April 16 and October 3, 2002, and therefore its March 13, 2003 decision was not a merit decision. The Office erred by implicitly extending the Board's jurisdiction in this case.

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 submitting relevant and pertinent evidence not previously considered by the Office.⁶ 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.⁷

ANALYSIS

In the present case, 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; and he has not submitted relevant and pertinent evidence not previously considered by the Office.⁸ The evidence appellant submitted is not pertinent to the issue on appeal. The May 8, 2003 report from Dr. Reynoso addressed findings on examination, stated results of recent diagnostic tests and summarily stated that appellant has had ongoing disability since 1980 from his accepted chronic mechanical discogenic lumbar pain condition. Dr. Reynoso, however, did not provide a relevant factual background or rationalized medical explanation pertinent to the relevant issue. The report consisted of arguments that were previously made and rejected by the Office and the Board in prior decisions, and is, therefore, cumulative and repetitive. Moreover, Dr. Reynoso's report did not present any additional evidence pertaining to the relevant issue of whether appellant had any residual disability of the accepted injury, subsequent to June 27, 1993. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁹ Appellant's reconsideration request failed to show that the Office erroneously 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 the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

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

⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

⁸ The Board notes that, in light of the fact that the most recent nonmerit decision in this case was issued by the Office on January 12, 2001, and appellant's request for reconsideration was dated June 6, 2003, the Office erred in applying the abuse of discretion standard in its July 2, 2003 decision instead of the clear and convincing evidence standard applicable to untimely requests for reconsideration. Nevertheless, as appellant has failed to submit evidence indicating the Office abused its discretion in the July 2, 2003 decision, the Board will affirm on these grounds.

⁹ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 3, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member