

FACTUAL HISTORY

This is the second time that this case has been before the Board. The facts of this case are presented in the previous Board decision and are hereby incorporated by reference.¹ The Office accepted appellant's April 6, 1980 traumatic injury claim for mild instability of the left knee and approved compensation benefits through March 10, 1981, after which appellant returned to regular duty.² On January 24, 1984 it accepted a November 14, 1983 traumatic injury claim for low back sprain and pain syndrome. Appellant stopped work and received appropriate compensation for total disability. On November 1, 2001 the Office reduced appellant's compensation benefits to reflect his capacity to earn wages in the constructed position of a telephone solicitor. On September 10, 2002 an Office hearing representative found that the evidence required further development as to appellant's entitlement to compensation subsequent to the date compensation was reduced. By decision dated September 30, 2002, the Office found that appellant was entitled to compensation based upon his ability to earn wages as a telephone solicitor. This decision was affirmed an Office hearing representative on June 23, 2003. By decision dated March 11, 2004, the Board affirmed the wage-earning capacity determination.³

Following the Board's March 11, 2004 decision, appellant requested reconsideration before the Office. He submitted a November 19, 2003 medical opinion from Dr. Smith who reiterated his opinion that appellant had chronic cervical and low back syndrome, myofascial pain and traumatic discogenic disease which had caused a stress disorder, psoriasis and headaches. He stated that appellant was impaired and disabled as a result of these conditions. By decision dated May 17, 2004, the Office denied the request for reconsideration without reviewing the case on the merits. The Office determined that Dr. Smith's November 19, 2003 report merely restated his prior opinion which had already been fully considered and that the November 19, 2003 report did not constitute new and relevant medical information.

By letter dated May 27, 2004, appellant again requested reconsideration and submitted additional reports by Dr. Smith. On February 18, 2004 Dr. Smith again stated that appellant was significantly disabled and impaired. In a May 12, 2004 report, he reiterated that appellant had chronic cervical and low back syndrome, headaches, sciatica and general facet problems in both the cervical and lumbar spine in addition to his advanced psoriasis.

By decision dated June 4, 2004, the Office determined that appellant neither raised substantive legal questions nor submitted new and relevant evidence, such that her request for reconsideration was insufficient to warrant further merit review. The Office noted that the reports of Dr. Smith were cumulative and repetitive.

¹ *Ray W. Rollins*, Docket No. 03-2283 (issued March 11, 2004).

² At the time of the employment injury, appellant was a 26-year-old painter who twisted his left knee descending a "brow."

³ The Board addressed the conflict in medical opinion arising between Dr. Randall N. Smith, an attending Board-certified orthopedic surgeon, and Dr. William H. Simon, a second opinion physician also Board-certified in orthopedic surgery. The weight of medical opinion was found to be represented by the impartial medical specialist, Dr. Marvin N. Kallish, a Board-certified orthopedic surgeon.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

ANALYSIS

In the instant case, the Office denied reconsideration of appellant's case, finding that the medical evidence from Dr. Smith was duplicative and cumulative of the physicians prior reports, which had listed his diagnosis and stated his opinion on total disability. The Board finds that Dr. Smith's several reports are duplicative and cumulative of his previous reports already in the record and reviewed by the Office.

The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.⁵ Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advanced a legal argument not previously considered by the Office. Further, he failed to submit relevant new and pertinent evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, he is not entitled to a merit review.⁶

CONCLUSION

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

⁴ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁵ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁶ *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 4 and May 17, 2004 are hereby affirmed.

Issued: February 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member