United States Department of Labor
Employees' Compensation Appeals Board

ISAIAH COFFEY, JR., Appellant	)	
and	)	**Docket No. 04-2281**
	)	**Issued: February 25, 2005**
TENNESSEE VALLEY AUTHORITY, Chattanooga, TN, Employer	)	

Appearances:
Isaiah Coffey, Jr., 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 September 20, 2004 appellant filed a timely appeal from the nonmerit decision of the Office of Workers' Compensation Programs dated June 18, 2004, which denied appellant's request for a merit review. Because more than one year has elapsed between the last merit decision dated May 20, 2003 and the filing of this appeal on September 20, 2004 the Board has jurisdiction to review only the nonmerits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On January 20, 2002 appellant, a 50-year-old assistant unit operator, filed an occupational disease claim alleging that on July 4, 1987 he first realized his hearing loss was employment related.

On August 19, 2002 the Office received a December 14, 1992 audiogram, which showed the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps) for air conduction: on the left -- 5, 10, 15 and 15 decibels; on the right -- 15, 10, 15 and 20 decibels.

On November 21, 2002 the Office referred appellant, the record and a statement of accepted facts to Dr. George Godwin, a Board-certified otolaryngologist, for a second opinion. In a December 16, 2002 report, Dr. Godwin obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cps for air conduction: on the left -- 30, 35, 35 and 40 decibels; on the right -- 35, 40, 45 and 50 decibels. Dr. Godwin diagnosed bilateral sensorineural hearing loss due to noise exposure during appellant's federal employment.

The Office accepted a noise-induced employment-related hearing loss on January 3, 2003.[1]

Appellant filed a schedule award claim on May 1, 2003.

On May 13, 2003 an Office medical adviser reviewed the audiological findings submitted by Dr. Godwin and stated that he did not calculate a schedule award based upon Dr. Godwin's findings. The Office medical adviser explained that appellant had been "previously examined for NIHL [noise-induced hearing loss]" on December 14, 1992 close to the time of his retirement in 1993 and that when he retired in 1993 he had been "found to have a nonratable h[earing] l[oss]" as of December 14, 1992. Based upon these factors, the Office medical adviser concluded that "since NIHL does not progress after removal from hazardous source, any worsening of hearing loss since 1992/1993 is not work related." The medical adviser attached a study conducted by the "Ohio State … commissioned … by D.O.L. [Department of Labor]" to support his conclusion.

By decision dated May 20, 2003, the Office found that appellant did not sustain a ratable hearing loss impairment.

Appellant requested reconsideration on May 19, 2004 contending that the evidence of record was sufficient to entitle him to a schedule award for his employment-related hearing loss based upon which the Office had accepted that he sustained an employment-related hearing loss.

By decision dated June 18, 2004, the Office denied appellant's request for reconsideration without conducting a merit review citing that his contention was immaterial as he did not submit any evidence in support thereof. The Office concluded that appellant's request was insufficient to warrant merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,[2] section 10.606 of Title 20 of the Code of Federal Regulations

[1] Appellant retired from the employing establishment effective June 19, 1993.

[2] 5 U.S.C. § 8101 *et seq.* Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application."

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) constituting relevant and pertinent new evidence not previously considered by the Office.[3] Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review of the merits of the claim.[4] The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[5]

ANALYSIS

In the present case, appellant has not established that the Office's refusal in the June 18, 2004 decision denying his request for reconsideration of its May 20, 2003 decision constituted an abuse of discretion. The Board notes that appellant submitted no new evidence related to his hearing loss claim. Specifically, he provided no evidence to support his contention that the Office improperly found no ratable hearing loss. As he submitted no relevant and pertinent new evidence related to the issue of entitlement to a schedule award, the subject of the May 20, 2003 denial, the Board finds that appellant has not shown that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or submitted relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

[3] 20 C.F.R. § 10.606(b)(2); *see also Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

[4] 20 C.F.R. § 10.608(b).

[5] *Edward W. Malaniak*, 51 ECAB 279, 283 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2004 is affirmed.

Issued: February 25, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member