

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

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JOHN D. MASON, Appellant)	
)	
and)	Docket No. 05-842
)	Issued: June 22, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Pocatello, ID, Employer)	
)	

Appearances:
John D. Mason, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 COLLEEN DUFFY KIKO, Member
 DAVID S. GERSON, Alternate Member
 MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 28, 2005 appellant filed a timely appeal from a nonmerit Office of Workers' Compensation Programs' decision dated June 16, 2004, denying his request for reconsideration. Because more than one year elapsed between the merit decision dated January 12, 2004 and the filing of this appeal on February 28, 2005, 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

Appellant, a 51-year-old postal clerk, filed a Form CA-2 claim for benefits on December 26, 2002, alleging that he sustained an aggravation of a herniated cervical disc which was causally related to factors of his employment. Appellant submitted a December 4, 2002 report from Dr. Eric C. Roberts, Board-certified in preventive medicine, who stated that appellant had

experienced a sudden onset of left shoulder and left elbow pain approximately two weeks previously and had not returned to work. Dr. Roberts stated findings on examination, reviewed appellant's medical history and diagnosed the following conditions: cervical protruding disc disease by history with possible new herniation or extrusion; cervical radiculopathy; muscle spasm; left shoulder pain; and neck pain. Dr. Roberts opined that appellant was temporarily totally disabled.

On January 16, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated March 13, 2003, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim.

By letter dated August 19, 2003, appellant requested reconsideration.

By decision dated September 16, 2003, the Office denied the request for reconsideration.

By letter dated September 28, 2003, appellant requested reconsideration. Appellant submitted a September 23, 2003 report from Dr. Roberts, who reiterated his previous diagnoses and opined that appellant's injury was work related and sustained while he was lifting mail. He stated:

“[Appellant's] cervical disc herniations, radiculopathies, muscle spasm, and soft tissue injuries are the result of repetitive stresses applied to the body at sufficient force or frequency to slowly and progressively lead to tissue damage. Injuries can be treated, and improvements will occur; however, if the worker is reassigned to the same job, recurrence is likely. At risk jobs might require such factors as excessive force, rapid speed [often machine paced] uncomfortable and poorly fitting tools, awkward working postures or excessive joint motion. A variety of tissue can be affected by the type of work that [appellant] does: (1) muscles; (2) tendons; (3) bursae; (4) ligaments; (5) peripheral nerves; (6) bones; (7) cartilage; (8) intervertebral discs.”

* * *

“The musculoskeletal unit is most often affected by cumulative trauma because of the relatively poor blood supply at the bone tendon interface, which produces delayed, incomplete or partial healing. Repetitive motion and stress lead to microtrauma of the tissue. An acute inflammatory response ensues that can become chronic. Chronic inflammation can lead to more tissue damage. The common etiological feature of these disorders is that repetitive trauma occurs faster than the tissues' ability to heal itself, thus the biomechanical process.... These overworked injuries usually develop slowly and gradually over many weeks, months or even years. A number of activities and related equipment have

been implicated as etiological and aggravating factors for patients like [appellant].”

By decision dated January 12, 2004, the Office denied the request for reconsideration.

By letter dated March 30, 2004, appellant requested reconsideration. Appellant submitted a February 10, 2004 report from Dr. Roberts; a November 22, 2002 report from Dr. James Shaw, Board-certified in emergency medicine; and a December 17, 2002 report from Dr. Clark Allen, a Board-certified neurological surgeon.

In his February 10, 2004 report, Dr. Roberts stated findings on examination, provided an impairment rating of appellant’s upper extremity and essentially reiterated his previous findings, diagnoses and conclusions. Dr. Shaw stated in his November 22, 2002 report that appellant had complaints of neck pain radiating down to his left arm. He noted that appellant’s job as mail handler required a great deal of lifting, bending, twisting, pushing and pulling, which he stated was aggravating his current symptoms.

In a report dated December 17, 2002, Dr. Allen stated that appellant reported with significant surgical lesions on his cervical spine at three levels. Dr. Allen offered appellant an anterior cervical discectomy and fusion in an attempt to help his symptoms.

By decision dated June 16, 2004, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

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.¹ 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.²

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. The evidence appellant submitted is not pertinent to the issue on appeal. The February 10, 2004 report from Dr. Roberts indicated findings on examination, provided an impairment rating of appellant’s upper extremity and reiterated his

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

² *Howard A. Williams*, 45 ECAB 853 (1994).

previous diagnoses. However, his report was cumulative and repetitive of his previous reports which were rejected by the Office in prior decisions. Drs. Shaw and Allen noted appellant's complaints of neck pain and addressed findings on examination. Dr. Shaw stated that appellant's job as mail handler required a great deal of lifting, bending, twisting, pushing and pulling, which he stated was aggravating his current symptoms. Dr. Allen discussed the possibility of cervical surgery with appellant as a means of alleviating his symptoms. These reports, however, did not provide a relevant factual background or rationalized medical explanation pertinent to the relevant issue of causal relationship. 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.³ 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.⁴

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).

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ See *David J. McDonald*, 50 ECAB 185 (1998).

⁴ The Board notes that appellant submitted additional evidence to the record following the May 29, 2003 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).