

The record includes a May 17, 2002 report of a chest x-ray that indicated a normal reading and a thoracic spine x-ray that revealed a loss of height of the lower thoracic body. In a report dated May 17, 2002, Dr. Bruce Neumann, Board-certified in emergency medicine, examined appellant that day noting an injury on May 16, 2002, and returned him to regular duty without restrictions. By letter dated July 12, 2002, the Office advised appellant of what evidence he needed to submit to support his claim for an injury on June 17, 2002.

In a report dated June 12, 2002, Dr. Neumann stated that he initially treated appellant on May 17, 2002 for a possible upper thoracic radiculitis. He also requested authorization for chiropractic treatment as appellant related relief from several chiropractic manipulations subsequent to his treatment with him. On January 15, 2003 Dr. Dave Jensen, appellant's chiropractor, stated that he had treated appellant on August 15, 2002 for muscle spasm and rib cage injury which was an exacerbation of a May 21, 2002 injury. He noted that appellant could return to light duty on that day.

On January 24, 2003 appellant alleged that he sustained a recurrence of disability on January 15, 2003. He again stated on March 3, 2003 that he sustained a recurrence of disability on January 15, 2003 when he picked up a 50-pound object which caused pain in the same area in his back.

In a report dated March 5, 2003, Dr. Jensen stated that appellant sustained an exacerbation of left-sided rib complex and neck pain associated with the May 2002 work-related injury. He noted that appellant had undergone rib stabilization and mobilization with adjustments to vertebral levels. Dr. Jensen further noted that appellant required chiropractic manipulation therapy two to three times a week with one to two deep tissue massages over the next four weeks and four to six sessions of physical therapy and home exercise.

On April 17, 2003 the Office again requested that appellant provide certain information needed to determine his May 17, 2002 claim.¹ It also advised that the January 15, 2003 claim for recurrence of disability was closed because the claim represented a new injury. The Office advised appellant that he should submit a CA-1, claim for traumatic injury, to develop the alleged January 15, 2003 injury.

On September 2, 2003 the Office denied appellant's claims for a work-related injury on May 16, 2002 and a recurrence of disability on January 15, 2003 as appellant had not established that he sustained an employment-related injury. The Office found that Dr. Neumann's May 17, 2003 report was speculative in that the doctor stated that appellant sustained a possible thoracic strain. It also found that Dr. Jensen, appellant's treating chiropractor, did not diagnose a subluxation by x-ray and thus he was not considered a physician under the Federal Employees' Compensation Act and his reports had no probative value.

On August 25, 2004 appellant filed a request for reconsideration. Appellant submitted various treatment records that were previously of record.

¹ The Office's questions addressed a traumatic injury.

By decision dated September 9, 2004, the Office denied review of appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

ANALYSIS

In support of his request for reconsideration, appellant resubmitted Dr. Neumann's May 17, 2002 emergency room report and Dr. Jensen's March 5, 2003 report, both of which had been considered by the Office previously. Appellant also resubmitted chiropractic treatment notes from July 6, 2002 to March 21, 2003. Appellant asserted that this evidence cured the evidentiary deficiency found by the Office.

However, these contentions and submissions are insufficient to require the Office to reopen the claim for a merit review as the Office had previously considered these reports. The Board has held that material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁶ Thus, appellant did not present a relevant legal argument nor did he show that the Office erroneously applied a point of law. Additionally, appellant did not submit new and relevant evidence in support of his request for reconsideration of the Office's September 2, 2003 decision that denied his claim. Appellant did not submit any medical reports, previously not submitted, addressing whether he sustained an employment-related injury on May 16, 2002.

The Board finds that, as appellant did not meet any of the three regulatory criteria for reopening a claim, they properly denied his reconsideration request without conducting a merit review of the claim.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.606.

⁴ 20 C.F.R. § 10.607.

⁵ 20 C.F.R. § 10.608.

⁶ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

CONCLUSION

The Office properly denied appellant's request for reconsideration without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2004 is affirmed.

Issued: May 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member