

FACTUAL HISTORY

Appellant, a 55-year-old clerk,¹ filed an occupational disease claim on June 11, 1998 alleging that she developed a right shoulder condition in the performance of duty. She first became aware of her condition on July 30, 1997.²

By decision dated July 22, 1998, the Office accepted the claim for rotator cuff tear of the right shoulder. The Office authorized a right shoulder arthroscopy and rotator cuff repair, which was performed by William B. Geissler, a Board-certified orthopedic surgeon on February 16, 1999. The Office also authorized a repeat rotator cuff surgery on February 23, 1999 due to the metal anchor having pulled from the bone. Appellant also received treatment from Dr. Rosie Walker-McNair, a Board-certified internist.

Appellant returned to part-time work on May 24, 1999 and increased her limited duty to eight hours per day on January 13, 2000.

By decision dated July 7, 2000, the Office granted appellant a schedule award for 17 percent permanent impairment of her right upper extremity.

By decision dated March 23, 2001 the Office notified appellant that the position of modified distribution clerk fairly and reasonably represented her wage-earning capacity.³ By letter dated April 10, 2001, appellant requested reconsideration, and on June 9, 2001, she filed a recurrence of disability claim as of March 28, 2000 due to the July 30, 1997 injury. Appellant stopped work on May 21, 2001. By decision of June 28, 2001, the Office vacated the March 23, 2001 decision. The Office found that the December 6, 2000 job offer did not list the physical requirements of the position such that the Office could not determine whether it was appropriate for her physical limitations.

By decision dated July 25, 2001, the Office denied appellant's recurrence of disability claim. The Office advised appellant that the medical evidence attributed her current disability to conditions that were not accepted under either of her claims. Appellant was advised that she could file a new claim for occupational disease with regard to such conditions.

In a May 17, 2002 report, Dr. Walker-McNair advised that appellant had multiple medical problems affecting her ability to work. She indicated that appellant's complaints of numbness and tingling of her right hand were secondary to chronic tendinitis and bursitis of the right shoulder from her rotator cuff injury. Dr. Walker-McNair indicated that this would be permanent. She also addressed appellant's hypertension and explained that it was related to

¹ Appellant retired from the employing establishment on January 31, 2003.

² Appellant also filed an occupational disease claim on August 2, 2001 alleging that she developed chronic tendinitis of the right shoulder in the performance of duty. Claim No. 062040540. This claim was denied by the Office and on appeal by decision dated March 5, 2004. Docket No. 03-351 (issued March 5, 2004).

³ On December 6, 2000 the employing establishment offered appellant a full-time position as a modified distribution clerk. Appellant accepted the position on January 10, 2001.

multiple stress factors including “work, personal, anxiety and chronic pain.” Dr. Walker-McNair advised that, after appellant was taken off work, her blood pressure improved. She opined that appellant’s cervical disc disease was affecting appellant’s left shoulder and left chest area with intermittent bursitis. Dr. Walker-McNair also addressed appellant’s gastroesophageal reflux disease and irritable bowel syndrome advising that it worsened with anxiety and stress and opined that it was in her “best interest not to work.”

By letter dated June 19, 2002, appellant requested reconsideration of the July 25, 2001 decision. By decision dated September 24, 2002, the Office denied modification of the July 25, 2001 decision.

By decision dated September 25, 2002, the Office advised appellant that she had been receiving medical treatment for conditions which were not accepted as work related and denied the following medical conditions: hypertension, cervical disc disease, bilateral chronic shoulder tendinitis and or bursitis, depression, somatoform pain disorder, recurrent dysthymia, gastroesophageal reflux disease and chest pain disorder. The Office determined that the medical evidence did not establish that these conditions were caused or related to her federal employment or the injury of July 30, 1997.

By letter dated October 23, 2002, appellant requested a hearing, which was held on August 22, 2003.⁴

In a report dated August 30, 2002, Dr. Walker-McNair advised that appellant was “mentally and physically unable to work due to her multiple medical problems.” On September 8, 2003 Dr. Walker-McNair referenced her May 17, 2002 report and opined that appellant’s problems could not “be proven to be a direct cause of her injury.” Regarding appellant’s hypertension, she stated that “the chronic pain and stress of her job aggravated her blood pressure causing it to be elevated and difficult to control. This also aggravated her gastroesophageal reflux disease.”

By decision dated November 13, 2003, the Office hearing representative found that appellant had not established her other medical conditions as consequential to her accepted injuries and affirmed the September 25, 2002 decision.

Subsequent to the decision, the Office received copies of medical records previously of record and reviewed.

By letter dated November 11, 2004, appellant requested reconsideration. She alleged that her modified-duty position exceeded her work restrictions. She alleged that her doctor was intimidated by an investigator and that she was not provided proper treatment. She alleged that her schedule award was not paid in a lump sum, that she was not paid for several dates from May 21 through July 24, 2001, and that the processing of her compensation claim caused stress.

⁴ During the hearing, appellant alleged that her high blood pressure, gastroesophageal reflux disease, bursitis, cervical disc disease, chest pain, somatoform pain disorder, and depression were work related. Appellant was advised that an emotional condition could be accepted as consequential to an accepted physical injury, but that she would need a medical opinion supporting causal relation.

In a February 8, 2004 report, Dr. Walker-McNair, advised that she had treated appellant for hypertension, bursitis, and gastroesophageal reflux disease. She indicated that appellant's blood pressure was under control and that appellant's bursitis had not been exacerbated since being at home. Dr. Walker-McNair reported that appellant's "job was a contributing factor to her blood pressure being elevated while she worked." Dr. Walker-McNair opined that appellant's bursitis had improved since she no longer had to do repetitive movements with her right hand or shoulder. She also indicated that her gastroesophageal reflux disease had improved since appellant was no longer under the stress of her job.

By decision dated December 17, 2004, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request was cumulative and insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

"(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

"(ii) Advances a relevant legal argument not previously considered by [the Office]; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁷

ANALYSIS

Appellant disagreed with the Office's denial of her claim for the conditions of hypertension, cervical disc disease; recurrent dysthymia, gastroesophageal reflux disease, and chest pain disorder as consequential to her July 1997 work injury. She requested reconsideration on November 11, 2004. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether these additional conditions were consequential to her July 1997 work injury.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b).

⁷ 20 C.F.R. § 10.608(b).

Appellant reiterated her previous arguments. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁸ As the underlying issue is medical in nature, appellant's assertions are not relevant and do not otherwise advance a relevant legal argument not previously considered by the Office or show that the Office erroneously applied or interpreted a specific point of law.

Appellant submitted Dr. Walker-McNair's February 8, 2004 report, which advised that appellant's job contributed to her elevated blood pressure and that appellant's bursitis had improved since she no longer had to do repetitive movements with her right hand or shoulder. However, this report is duplicative of Dr. Walker-McNair's September 8, 2003 and May 17, 2002 reports. Appellant also submitted documents that were previously of record. As noted the submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review. Appellant did not provide any relevant and pertinent new medical evidence regarding whether the additional conditions of hypertension, cervical disc disease, recurrent dysthemia, gastroesophageal reflux disease, and chest pain disorder were consequential to her July 1997 work injury. Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office of Workers' Compensation Program properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a)

⁸ *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs December 17, 2004 is affirmed.

Issued: November 23, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board