

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

ANTHONY G. TROLLA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ironwood, MI, Employer**

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**Docket No. 06-422
Issued: April 7, 2006**

Appearances:
Anthony G. Trolla, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 13, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated September 12, 2005, denying his request for further merit review of his claim. The most recent merit decision of the Office was an August 26, 2004 decision which denied his claim. Because more than one year has elapsed between the most recent merit decision of the Office and the filing of this appeal, the Board lacks jurisdiction to review the merits of this 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 of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 18, 2003 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on that date he was standing too long at his post sorting flat mail, when he experienced pain, tingling and soreness down the right hamstring to his heel.

On October 24, 2003 appellant claimed a recurrence of disability commencing the prior day attributable to the claimed September 18, 2003 injury. He also noted a previous January 11, 1990 claim for a left knee injury, File No. 09339730. Appellant stated that, since April 2001, a chair used to accommodate his limited light duty was unsatisfactory as his legs did not reach the floor. When he used the footrest, his legs had restricted movement which caused swelling and burning to his heels, tightness of his right Achilles tendon and right hamstring, with soreness of the right hip, right buttocks and lower back.

In an undated note, appellant stated that on September 18, 2003 he was on light duty with a restriction rotating him between standing for one hour and sitting for one hour. His supervisor required appellant to perform a separate task after sitting for only 15 minutes. Appellant later felt a burning from the right hip to the heel and soreness in his right buttock. On October 23, 2003 he felt numbness in his right leg and soreness from the low back to the heel after sitting and standing for 60 minutes sorting mail. Appellant described the physical requirements of his job while sitting on a particular chair. He previously used a “restbar” chair until his supervisor removed it. Appellant did not stop work after the September 18, 2003 incident.

By letter dated November 10, 2003, the Office advised appellant of the information needed to establish his September 18, 2003 claim as well as the October 23, 2003 recurrence of disability claim. In a report dated September 24, 2003, Dr. Marc R. Durette, an attending physiatrist, stated that appellant had ongoing problems with pain in his buttock radiating down his leg for which he had physical therapy. He noted that appellant’s pain “worsened the other day at work” after sitting. Examination revealed a normal range of motion of his hip and positive straight leg raising, bowstring and Lasègue’s sign. Dr. Durette noted a decrease in deep tendon reflexes in both lower extremities of the knee and ankle, and normal motor and sensory examinations. He noted ongoing sciatica or an early radiculopathy.

In a report dated November 6, 2003, Dr. Durette stated that appellant’s electromyogram evaluation study revealed mild right sided L3-4 lumbar radiculopathy. A March 1991 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a Grade 1 spondylolisthesis of L5 on S1, and mild a neural foraminal compromise on the left at L5-S1. Previous hip films in March 1991 were normal with no evidence of bone injury.

By decision dated December 15, 2003, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that he sustained an employment-related injury as a result of the accepted incident at work on September 18, 2003.¹

On August 11, 2004 appellant requested reconsideration and submitted physical therapy notes from September 15, 2003 to April 19, 2004. On December 18, 2003 Dr. Durette noted that he previously treated appellant for back and hip pain in 2001, but that diagnostic tests at that time were normal. Appellant related a flare-up of pain in the spring of 2003 associated with sitting for prolonged periods in a chair without support. He also noted a recurrence in the fall of 2003 with repetitive activity at work. Upon examination, Dr. Durette stated that appellant had mild scoliosis of the lower thoracic region and a mild hamstring tightness. He found tenderness of the

¹ As the Office denied the initial claim for a traumatic injury, it did not address the recurrence claim.

right lower lumbar paraspinal muscles, over the lumbar spinous processes and mild trigger points in the gluteus maximus muscles. Appellant's heel, toe and tandem gait were normal with no swelling in the lower extremities. Manual strength tests bilaterally were normal with no focal weaknesses noted. His range of motion of the hip was full and pain free. Patrick's sign was negative bilaterally.

On January 29, 2004 Dr. Durette stated that appellant's symptoms sustained a flare-up over the prior week without a new injury. Appellant related that the employing establishment was not following his physical restrictions. Dr. Durette stated that, upon examination, appellant's diagnosis included a right lumbar radiculopathy versus a lumbar strain. He recommended a follow-up lumbar MRI scan and plain films for further evaluation.

On February 11, 2004 Dr. Durette stated that appellant's x-rays and MRI scans were stable when compared to the 2001 diagnostic tests. He noted no acute disc changes or herniation and no evidence of a surgical lesion. On April 22, 2004 Dr. Durette noted normal lumbar and hip range of motion findings and normal straight leg raising. He also reported normal manual muscle strength of the right lower extremity with no swelling. Appellant had tenderness of the right ischial bursa and over the lumbar spinal muscles along L4 region. Dr. Durette repeated earlier findings of Grade 1 spondylolisthesis and moderate narrowing of the L5 disc space. He noted chronic radiculopathy L3-4 as revealed by an EMG test. He stated that appellant's symptoms had improved somewhat and he recommended a gel pad cushion to help with his bursitis. On May 27, 2004 Dr. Durette stated that appellant's examination was essentially normal, noting continuous tenderness over the ischial bursa and the right lumbar paraspinal muscles.

On August 26, 2004 the Office modified the December 15, 2003 decision, finding that appellant sustained an incident on September 18, 2003. However, it denied compensation on the grounds that the medical evidence failed to support a causal relationship between his employment and his diagnosed conditions.

On August 24, 2005 appellant requested reconsideration and submitted a statement regarding the rehabilitation chair assigned to him during his work in the employing establishment's Ironwood, MI facility. Appellant alleged that the rehabilitation chair did not allow his feet to rest firmly on the floor or on the footrest, that his assigned work did not permit him to use the chair's backrest, and that the employing establishment did not implement work restrictions as required under a separate claim for a January 11, 1990 work injury. He argued that he was required to be "on my legs for more than one hour continuously" and then to use the rehabilitation chair while he recycled mail for the balance of the workday. Appellant added that, after his injury, the employing establishment provided a footrest for the rehabilitation chair. He stated that the employing establishment was incorrect when it asserted that the chair was an aid to his standing, noting that he used the chair for 15 minutes out of an 8-hour day with the makeshift footrest.

By decision dated September 12, 2005, the Office denied appellant's request for reconsideration on the grounds that his narrative statement was not sufficient to warrant further merit review as the underlying issue in the case was medical causation.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”²

Under 20 C.F.R. § 10.606(b)(2), 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 new evidence not previously considered by the Office. Section 10.608(b) 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 reviewing the merits of the claim. 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.³

ANALYSIS

Appellant disagreed with the Office's August 26, 2004 decision denying his compensation claim requested reconsideration on August 24, 2005. The underlying issue in this claim is medical in nature; whether appellant established that his September 18, 2003 employment activities caused any of his diagnosed conditions. However, appellant did not submit any medical evidence addressing this issue. Rather, he submitted a narrative statement addressing factual matters concerning a chair used at work.

The allegations contained in appellant's August 31, 2005 request for reconsideration essentially reiterate his previous arguments, including allegations that a rehabilitation chair failed to accommodate his work restrictions, or that the employing establishment did not implement work restrictions as required in a prior claim. However, as noted above, the underlying basis for the denial of the claim was the absence of medical evidence relating appellant's diagnosed conditions to his accepted employment job activities. Appellant's factual assertions do not show that the Office erroneously applied or interpreted a specific point of law nor do they advance a relevant legal argument not previously considered by the Office. Furthermore, the Office previously addressed these allegations in its previous December 15, 2003 decision. The

² 5 U.S.C. § 8128(a).

³ *Eugene F. Butler*, 36 ECAB 393 (1984).

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.⁴

Consequently, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office; nor has he shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously considered by the Office. Therefore, the Office properly denied his request for reconsideration without conducting a merit review of the claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2005 is affirmed.

Issued: April 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁴ *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).