United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 06-912**
	)	**Issued: August 8, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dublin, OH, Employer	)	

Appearances:
R.C., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 13, 2006 appellant filed a timely appeal of a December 15, 2005 decision of the Office of Workers' Compensation Programs finding that his request for reconsideration was insufficient to warrant merit review of the claim. Pursuant to 20 C.F.R. § 501.3(d)(2), the Board's jurisdiction is limited to Office final decisions issued within one year of the filing of the appeal and, since the last merit decision was dated February 17, 2005, the Board lacks jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the case under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that appellant sustained a back strain between his shoulders on September 12, 1977 while lifting a case of soap. Appellant filed a separate claim for an injury on September 24, 1992 when he fell while attempting to sit in a chair. This claim was accepted for

low back contusion and herniated nucleus pulposus at L4-5 and L5-S1, with compensation for wage loss terminated as of January 2, 1999.[1]

On September 3, 2004 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on September 24, 1992 he sustained a recurrence of the September 12, 1977 injury. In a report dated September 8, 2003, Dr. Peter Holliday, a neurosurgeon, noted that appellant sustained injury in 1992 when he fell from a wheeled chair that rolled out from underneath him. He provided an opinion regarding a permanent impairment. In a report dated July 15, 2004, Dr. Holliday opined that the 1992 injury aggravated and caused a progression of previous injuries to the neck in 1977 and 1981. By report dated August 19, 2004, he indicated that appellant was scheduled for an anterior cervical discectomy.

In a decision dated February 17, 2005, the Office denied the claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish the claim. By letter dated November 29, 2005, appellant requested reconsideration of the claim. He stated that his condition had worsened and he needed cervical surgery. Appellant submitted a June 16, 2005 report from Dr. Holliday, who stated that appellant continued to have severe neck pain. Dr. Holliday stated that a June 21, 2004 CAT (computerized axial tomography) scan showed an amputated nerve on the right at C5-6 and C6-7, caused by stenosis from bone spurs secondary to old cervical injuries. He stated that appellant had cervical injuries in 1977 and 1981, which "probably caused and accelerated these bone spur growths. It is my medical opinion that the 1992 injury is causally related to that of 1977 and 1981 cervical injuries and thereby exaggerated the existing conditions of his neck.…"

By decision dated December 15, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant further merit review of the claim.

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."

The Office's implementing regulations provide that an employee may request reconsideration of an adverse Office decision, and the request, along with supporting statements and evidence, is called the "application for reconsideration."[2] The application for reconsideration must set forth arguments and contain evidence that either (1) shows that the

[1] The Board affirmed the termination of compensation for wage loss. Docket No. 00-2410 (issued April 2, 2002).

[2] 20 C.F.R. § 10.605.

Office erroneously applied or interpreted a specific point of law, (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[3] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of these three requirements, the Office will deny the application for reconsideration 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.[4]

ANALYSIS

The underlying merit issue in this case is a claim for a recurrence of disability on September 24, 1992. A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[5] Appellant filed a claim for a new injury on September 24, 1992 based on a new employment incident, and the claim was accepted for low back conditions. If there is a new employment incident, it is not a recurrence of disability.[6]

On reconsideration, appellant submitted a June 16, 2005 report from Dr. Holliday, who referred to "the 1992 injury" and opined that this was causally related to 1977 and 1981 injuries. Dr. Holliday had previously discussed a September 24, 1992 injury and the reference to "the 1992 injury" is a clear reference to the injury based on a fall from a chair. He does not provide any relevant information regarding a spontaneous change in a medical condition without an intervening injury. Appellant did not provide any relevant and pertinent evidence with respect to the recurrence of disability issue. If he is contending that he continues to have disability related to the September 24, 1992 injury, he may pursue that issue under the appropriate claim. In this case, however, 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 evidence not previously considered by the Office. Since he did not meet any of the requirements of section 10.606(b)(2), the Office properly refused to reopen the claim for merit review.

CONCLUSION

The Office properly refused to reopen the claim for merit review because appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Eugene F. Butler*, 36 ECAB 393 (1984).

[5] 20 C.F.R. § 10.5 (x).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2005 is affirmed.

Issued: August 8, 2006
Washington, DC

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

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