

On November 23, 1999 the employing establishment offered appellant a modified-duty job which she accepted on November 30, 1999. In a decision dated May 11, 2000, the Office found that her actual earnings in the position represented appellant's wage-earning capacity.

Appellant received medical treatment from Dr. D. Dean Gafford, an osteopath. In a medical report dated January 24, 2001, he stated that appellant continued to experience intermittent low back, iliosacral and right hip pain. Dr. Gafford indicated that the sheer number of hours required on appellant's job caused an overuse syndrome of her already injured low back area. He further opined that appellant was not able to work at that time but that it was estimated that she could return to work no later than March 1, 2001 with reduced hours.

The Office referred appellant to Dr. Chouteau, an osteopath, for a second opinion. In a medical report dated May 8, 2001, he listed his impression as resolved lumbar strain with no evidence of neurological deficit.

In order to resolve the conflict between Drs. Gafford and Chouteau with regard to whether appellant had continuing residuals from her accepted injury, she was referred to Dr. Richard S. Levy, a Board-certified orthopedic surgeon, on January 25, 2002. In a medical report dated February 22, 2002, he diagnosed a resolved lumbar strain. Dr. Levy opined that there were no current objective findings. He noted, "The accepted diagnosis is lumbar strain. There is no evidence of structural injury to the lumbar spine except for a mild muscular injury. These muscular injuries resolve, at most, within a few months. I see no objective evidence that any further injury occurred." Dr. Levy indicated that appellant had experienced a full recovery.

On September 19, 2002 the Office proposed terminating compensation benefits for the reason that the medical evidence established that appellant no longer had residuals of the May 8, 1997 work injury.

In a medical report dated November 13, 2002, Dr. Gafford reviewed the medical reports of Dr. Levy and expressed his disagreement with his findings. He opined that appellant suffered a legitimate injury in May 1997 to her low back which had not healed completely and she had ongoing problems related to this injury which were complicated by congenital anomalies such as a short leg and prominent transverse processes of the lumbar vertebrae at L5.

In a decision dated April 2, 2003, the Office terminated benefits effective July 24, 2002. Appellant requested an oral hearing and submitted a January 13, 2004 report from Dr. Gafford who reiterated that appellant had a continuing injury.

In an April 7, 2004 decision, the Office hearing representative affirmed the April 2, 2003 decision, but modified the date of termination to April 2, 2003. The hearing representative noted that, given this new termination date, the issue of appellant's entitlement to benefits for a recurrence of disability effective October 30, 2000 would need to be addressed by the Office, and he returned the case to the Office in order for this to be done.¹

¹ The recurrence of disability claim was denied in a May 26, 2004 Office decision. It is not before the Board in the present appeal.

By letter dated April 7, 2005, appellant requested reconsideration of the April 7, 2004 decision. She submitted an April 6, 2005 report from Dr. Gafford who stated that appellant's sacroiliac joint dysfunction was unequivocally related to the May 8, 1997 injury. He opined that the acceptance of appellant's original injury should include sacroiliac joint dysfunction or iliosacral somatic dysfunction.

By decision dated June 27, 2005, the Office denied appellant's request for reconsideration, finding that the new evidence was not sufficient to warrant a merit review of the claim as it was cumulative and previously considered.

LEGAL PRECEDENT

To require the Office to reopen a case for merit reviews under section 8128(a) of the Federal Employees' Compensation Act (5 U.S.C. § 8128(a)), the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the 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.²

ANALYSIS

Appellant did not argue that the Office erroneously applied a specific point of law or advance a relevant legal argument not previously considered by the Office. He submitted the April 6, 2005 medical report of Dr. Gafford. Appellant indicated that appellant's sacroiliac joint dysfunction was related to the injury sustained on May 8, 1997. The Board finds, however, that Dr. Gafford's report is repetitive of his prior opinion that appellant continued to experience residuals from her work-related injury. This issue was resolved when appellant was referred to the impartial medical examiner, Dr. Levy, who concluded that there was no evidence of structural injury to the lumbar spine except for a mild muscular injury from which appellant had fully recovered. Dr. Gafford's April 6, 2005 report is cumulative of evidence previously considered by the Office and thus, insufficient to warrant review.³ Accordingly, the Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2)(i-iii).

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2005 is affirmed.

Issued: July 14, 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