United States Department of Labor
Employees' Compensation Appeals Board

RAYMOND R. CARPENTER, Appellant	)	
and	)	**Docket No. 05-1893**
	)	**Issued: May 11, 2006**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Bridgeville, CA, Employer	)	

Appearances:
Raymond R. Carpenter, 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 September 13, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated June 2, 2005, that denied his request for merit review. Because more than one year has elapsed between the last merit decision dated May 11, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 7, 2001 appellant, then a 45-year-old forestry technician/firefighter, filed a traumatic injury claim noting that, on that day, during a work-related field exercise, he carried a pack weighing 45 pounds. He alleged an injury to his neck causing pain and stiffness. Appellant listed his home address as P.O. Box 34, Mad River, CA. On May 7, 2001 Dr. Henry Edelstein,

Board-certified in emergency medicine, treated appellant for severe neck pain. On June 12, 2001 the Office accepted his claim for a cervical strain and authorized continuation of pay and physical therapy. On August 29, 2001 the employing establishment notified appellant that he had been terminated as he was a temporary employee whose continuation of pay had ended and who had refused a limited-duty position consistent with his restrictions.

In a report dated February 10, 2003, Dr. Daniel Farnum, a Board-certified orthopedic surgeon and second opinion physician, addressed appellant's history of injury. He stated that, although appellant had neck pain, he could return to his previous work. In a report dated March 5, 2003, Dr. Donald Iverson, appellant's Board-certified neurologist, stated that he had occipital nerve tenderness, left side greater than right.

On June 27, 2003 appellant advised the Office that he had moved and noted a new address of P.O. Box 1637, Hayfork, CA, 96041. He also discussed his medical condition and sought referral to a new doctor.

On October 16, 2003 the Office issued a notice of proposed termination of benefits regarding appellant's May 7, 2001 neck injury.[1] The Office mailed the letter to the Mad River, CA, address. In a letter dated November 8, 2003 and received on November 17, 2003, appellant noted concerns about the Office's processing of his claim. On November 19, 2003 the Office terminated his compensation benefits regarding his neck injury and mailed the decision to appellant's Mad River, CA, address.

On November 24, 2003 the Office replied to appellant's November 8, 2003 letter. It sent copies of the October 16, 2003 notice of termination and the November 19, 2003 termination decision to the Hayfork, CA, address.

On December 17, 2003 appellant requested a review of the written record.

On May 11, 2004 an Office hearing representative affirmed the November 19, 2003 decision terminating compensation benefits for appellant's neck injury. The decision included a recitation of his right to request reconsideration with the Office within one year of the May 11, 2004 decision and was mailed to the Mad River, CA, address. The appeal rights attached to the decision also advised appellant that he had up to a year to appeal to the Board. On November 23, 2004 appellant inquired as to the status of his request for review of the written record. On November 26, 2004 the Branch of Hearings and Review sent appellant a copy of the May 11, 2004 decision to the Hayfork, CA, address.

In a letter dated May 7, 2005 and received by the Office on May 16, 2005, appellant requested reconsideration and submitted evidence, including a March 5, 2003 report from Dr. Iverson and treatment notes from July 15, 2003 to December 13, 2004 from a physician whose name is illegible and from a physician's assistant. He repeated concerns with the way the Office processed his claim and also stated that he was notified initially of the May 11, 2004 decision in an Office letter dated November 26, 2004 that included a copy of the May 11, 2004

[1] The Office noted that appellant's disability was caused by a work-related inguinal hernia sustained on May 7, 2001 during the same field exercise that gave rise to his neck injury.

decision. Appellant added that had he been informed in a timely manner he would have been able to file an appeal with the Board within 90 days of the decision. He noted that the Office used the Mad River, CA, address even though he advised it that he had moved.

By decision dated June 2, 2005, the Office denied review of appellant's request for reconsideration on the grounds that the evidence submitted in support of the request for reconsideration was repetitious and irrelevant.

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 --
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> (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 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

In the present case, appellant presented no evidence that the Office erroneously applied or interpreted a point of law, nor did he advance a relevant legal argument not previously considered by the Office. In support of his request, appellant submitted arguments, a March 5, 2003 report from Dr. Iverson and treatment notes from July 15, 2003 to December 13, 2004.

His argument that he was not allowed to change his treating physician and other complaints regarding the way the Office handled his claim are not relevant to the underlying issue of whether the medical evidence showed that he continued to have residuals of his work-related injury. The Board finds that appellant's arguments do not constitute relevant and pertinent new evidence as it merely summarizes previously submitted evidence. Also the letter

[2] 5 U.S.C. § 8128(a).

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

did not establish an error of law or advance a new, relevant legal argument. Thus, the May 7, 2005 letter is insufficient to warrant a merit review of the claim.

With respect to the third regulatory element for reopening a claim, the submission of evidence not previously considered by the Office, appellant submitted new evidence in the form of medical treatment notes. However, they are not relevant to the underlying issue as none of these documents contained a medical opinion that appellant continued to have residuals of his May 7, 2001 neck injury. Indeed, to the extent that these notes were signed by a physician's assistant and not a physician, they do not constitute medical evidence as a physician's assistant is not a physician within the meaning of the Act.[4] Regarding the March 5, 2003 report from Dr. Iverson, this report is not sufficient to require the Office to conduct a merit review as it had been previously considered by the Office and thus is repetitious.[5]

On appeal, appellant argued that the Office notified him of the May 11, 2004 decision in November 2004. He asserted that had the Branch of Hearings and Review notified him properly of the May 11, 2004 decision, he would have been able to file an appeal with the Board within 90 days of that decision. Although the Branch of Hearings and Review advised appellant in its decision that he had 90 days to file an appeal with the Board, it further advised him that the Board would allow up to a year from the date of the decision, for the filing of an appeal. Appellant was notified that he could file either an appeal with the Board or could requested reconsideration. As of November 2004, appellant still had an opportunity to timely pursue either review option following issuance of the May 11, 2004 decision. Indeed, he did pursue the reconsideration option within one year of the May 11, 2004 decision. Therefore, the Office's mistake in initially sending the decision to the wrong address is harmless error.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further merit review pursuant to 5 U.S.C. § 8128(a).

[4] 5 U.S.C. § 8101(2); *Ricky S. Storms*, 52 ECAB 349 (2001).

[5] *See supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2005 is affirmed.

Issued: May 11, 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