

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

T.S., Appellant)
)
and) **Docket No. 06-1200**
) **Issued: November 28, 2006**
)
DEPARTMENT OF THE NAVY, LONG)
BEACH NAVAL SHIPYARD, Long Beach, CA,)
Employer)

Appearances:
Raymond S. Saint, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 12, 2005 and February 1, 2006 decisions which denied merit review. Because more than one year has elapsed between the most recent merit decision of the Office dated May 26, 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(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's requests for reconsideration dated June 22 and November 9, 2005.

FACTUAL HISTORY

This is the second appeal in the present case. In a January 21, 2005 decision, the Board affirmed the Office's decisions dated August 29, 2003 and May 26, 2004 which denied

appellant's claim for a recurrence of disability on and after December 2, 1992.¹ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

By letter dated June 22, 2005, appellant, through his attorney, requested reconsideration and indicated that he would forward medical documents to the Office.

By decision dated July 12, 2005, the Office denied appellant's reconsideration request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

By letter dated November 9, 2005, appellant requested reconsideration of the Office decision dated July 12, 2005 and submitted additional medical evidence. In a May 31, 2005 report, Dr. Ronald Schilling, Board-certified in physical medicine and rehabilitation, noted a history of injury of December 12, 1990 and indicated that appellant experienced pain in his low back and was permanent and stable at this time. He noted limited range of motion of the lumbar back and advised that a magnetic resonance imaging (MRI) scan dated June 4, 2002 revealed no abnormalities. Dr. Schilling diagnosed lumbar sprain/strain and lumbar radiculopathy. He opined that appellant's condition had become worse since examining him in April 2003. Dr. Schilling further advised that appellant was permanently disabled from working eight hours per day five days per week. In a form report entitled "Physician's Assessment of Patient's Physical Residual Functional Capacity" dated July 10, 2005, Dr. Schilling diagnosed lumbar sprain and strain and lumbar radiculopathy. He noted objective findings of tenderness, spasm and limited range of motion and advised that appellant would be limited to walking and standing less than one hour per day, sitting two to four hours per day, and lifting and carrying less than five pounds occasionally. Appellant could not climb ladders or bend, he was limited in his ability to climb stairs, and restricted to pushing and pulling up to 10 pounds with no overhead reaching. Dr. Schilling diagnosed depression, pain due to lumbar spasm and strain and lumbar radiculopathy and opined that appellant was totally disabled from a physical and psychological standpoint.

In a February 1, 2006 decision, the Office denied appellant's reconsideration request on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in the implementing federal regulations,⁴ which provides that a claimant may obtain

¹ The Office accepted appellant's claim for a lumbar strain and paid appropriate compensation.

² Docket No. 04-1651 (issued January 21, 2005).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(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 Office].”

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.⁵

ANALYSIS

Appellant’s June 22, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by the Office.

With his June 22, 2005 reconsideration request, appellant submitted only a narrative statement advising that he was updating his medical records and would forward them to the Office upon his receipt. However, this is insufficient to show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered. At the time of the July 12, 2005 decision, the record did not contain any new medical records and his letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant did not submit with his reconsideration request any relevant and pertinent new evidence not previously considered by the Office. He is not entitled to a review of the merits of his claim under section 10.606(b)(2). The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his June 22, 2005 request for reconsideration.

With respect to the November 9, 2005 request for reconsideration, appellant neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant’s request for reconsideration asserted that additional medical reports supported that his claim was compensable. However, appellant’s letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office had previously considered appellant’s

⁵ 20 C.F.R. § 10.608(b).

contentions that he experienced deterioration in his condition causally related to his accepted work injury. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered, Dr. Schilling's May 31 and July 10, 2005 reports are new. However, these reports are largely duplicative of Dr. Schilling's previously submitted reports dated June 10, 2002 and April 4, 2003 which were considered by the Office found to be deficient. A submission that repeats or duplicates evidence already in the case record has no additional value and does not constitute a basis for reopening a case.⁶ Therefore, these reports are insufficient to require the Office to reopen the claim for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."⁷

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his November 9, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's requests for reconsideration dated June 22 and November 9, 2005.

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2006 and July 12, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 28, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board