United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 06-1796**
	)	**Issued: November 9, 2006**
DEPARTMENT OF AGRICULTURE, AGRICULTURE MARKETING SERVICE, Florence, SC, Employer	)	

Appearances:
Appellant, pro se
Office of the 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 August 1, 2006 appellant filed a timely appeal from an August 3, 2005 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated May 24, 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(c)(2) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 28-year-old agricultural commodities grader, was struck in her left thigh and head by cotton sacks on November 24, 2001. She filed a claim for benefits, which the Office accepted for left thigh contusion and dried head injury-laceration. The Office paid appropriate compensation for total disability.

In order to determine appellant's current condition, the Office referred her for a second opinion examination with Dr. Eugene N. Powell, Board-certified in orthopedic surgery. In a report dated October 27, 2003, Dr. Powell stated:

> "[Appellant] complains of pain in the back leg though this does not follow any known dermatomal pattern. She does not have any consistent weakness and provocative maneuvers are quite inconsistent in the supine and seated position. This should not be the case with true organic pathology, therefore, her subjective complaints outweigh any objective medical findings.
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> "As the residuals were qualified to be cervical and lumbar strain, these are self-limited, temporary situations which by definition should have resolved. There are no objective findings in terms of imaging studies or clinical examination to indicate. The original MRI [magnetic resonance imaging] scan which tended to indicate [that] a dis[c] herniation and foraminal stenosis was followed up with a more definitive CT [computerized tomography] myelogram which did not reveal any evidence of nerve root compression nor does the patient demonstrate any findings of nerve root compression.
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> "I do feel [appellant] has reached maximum medical improvement from her work injury. She apparently has some psychological implications from the injury; however, I am not qualified to evaluate those implications and this probably needs to be followed up from her regular treating physicians."

On March 23, 2004 the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Jo Ann Marturano, Board-certified in psychiatry and neurology, for a psychiatric evaluation. The referral letter advised appellant that the examination was scheduled for April 14, 2004. Appellant failed to appear at the scheduled examination.

By letter dated April 20, 2004, the Office issued a notice of proposed suspension of compensation based on appellant's failure to appear at the scheduled appointment. The Office noted that she had been advised in the March 23, 2004 letter that her right to compensation could be suspended if she refused to submit to a medical examination. The Office noted that appellant had 14 days to explain why she failed to keep the April 14, 2004 appointment with Dr. Marturano. Under section 8123(d) of the Federal Employees' Compensation Act, if she did not respond or if she did not show good cause for failing to keep the appointment, her entitlement to compensation would be suspended until she agreed to submit to the examination as directed.

By letter dated April 25, 2004, appellant advised the Office that she did not appear at the scheduled examination with Dr. Marturano because her condition was improving and she felt she could recover on her own. Appellant explained that she had been exercising regularly, was administering home remedies for her condition and was trying to wean herself from the medication. Appellant stated that she had been feeling much better recently and believed she would be fully recovered within a couple of months.

By decision dated May 24, 2004, the Office suspended appellant's right to compensation effective June 13, 2004 based on her failure to submit to the medical examination scheduled with Dr. Marturano on April 14, 2004. The Office found that appellant failed to submit an acceptable explanation justifying her refusal to attend the medical evaluation.

By letters received by the Office on May 20 and 23, 2005, appellant requested reconsideration. She indicated that she had attempted to effect an improvement in her condition on her own and had initially succeeded to a certain extent, but had recently sustained a setback in her efforts. Her left leg had given out during December 2004, for which she sought treatment from a Dr. Jackson. Appellant stated that she was on several medications and required financial assistance to care for herself and her children. Appellant did not indicate her intention to reschedule and attend the examination required by the Office.

By decision dated August 3, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), 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 evidence not previously considered by the Office.[1] 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.[2]

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Appellant did not submit any evidence or legal argument which addressed the relevant issue of whether she had reasonable justification for not attending the April 14, 2004 appointment with Dr. Marturano or whether she intended to schedule a new examination, as required by the Office to reinstate her entitlement to compensation. Appellant noted her effort to self-medicate and improve but that these efforts were ultimately unsuccessful.

[1] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[2] *Howard A. Williams*, 45 ECAB 853 (1994).

She injured her left leg in December 2004 and received treatment from Dr. Jackson. Appellant claimed that she was taking several medications and required financial assistance. However, she did not indicate her intention to reschedule and attend the examination required by the Office. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[3] Appellant's reconsideration request failed to 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. Therefore, it did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 9, 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

[3] *See David J. McDonald*, 50 ECAB 185 (1998).