United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 07-288**
	)	**Issued: April 6, 2007**
DEPARTMENT OF THE ARMY, MONROE AREA OFFICE FOR OPERATIONS, L.C., BOGGS LOCK & DAM, Vick, LA, Employer	)	

Appearances:
Richard D. Zipp, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 9, 2006 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated October 13, 2006 denying further review of the merits of his claim. As the last merit decision in this case was issued on April 23, 2003, more than one year before the filing of this appeal, the Board does not have jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

This case has been before the Board on three previous occasions. The facts and the circumstances of this case as set forth in the prior decisions and orders are hereby incorporated by reference.[1] A summary of the factual history to date is provided below.

On September 17, 1997 appellant, then a 41-year-old lock and dam equipment operator, filed an occupational disease claim alleging that, as a result of conditions of his federal employment, he suffered a heart attack. By decision dated December 24, 1997, the Office denied his claim as it found that he had failed to establish fact of injury. On March 20, 2001 the Office again denied appellant's request for reconsideration without conducting a merit review. By order dated September 24, 2002, the Board remanded the case with instructions that the Office double this case with his claim for a traumatic injury filed on the same date, review the evidence and issue a new decision on whether there was sufficient evidence in support of his claim.[2] By decision dated April 23, 2003, the Office reviewed the new information and denied appellant's claim as the medical evidence failed to establish that there was a relationship between his employment and the claimed conditions. By letter dated May 30, 2005, appellant requested reconsideration. On August 8, 2005 the Office denied his request for reconsideration as it was untimely filed and failed to present clear evidence of error. By decision dated March 16, 2006, the Board affirmed the August 8, 2005 decision.[3] The Board denied appellant's petition for reconsideration on July 6, 2006.[4]

On August 9, 2006 appellant requested reconsideration before the Office. In support of his request for reconsideration, he submitted numerous documents that had been submitted and reviewed previously and were in the record. These included hospital records dated May 21, 1997; a November 4, 1997 report by Dr. S.W. Sentell, a psychologist; medical reports dated June 22 and November 29, 1999 and December 22, 2000 by Dr. Robert Po, a Board-certified orthopedic surgeon; and a medical report by Dr. A. Craig Pearce, a Board-certified internist with subspecialty certificates in cardiovascular disease and interventional cardiology, dated April 4, 2001.

In addition, appellant submitted documents that were not previously included in the record. These included a medical report by Dr. Frank W. Smart, a Board-certified internist with a subspecialty certificate in cardiovascular disease, dated July 26, 2002. In his report, Dr. Smart indicated that appellant was his patient and that he had severe ischemic cardiomyopathy and an ejection fraction of 35 percent and heart failure. He further noted that, due to appellant's medications, he was unable to carry out any degree of exertion at all and noted that stressful situations would cause him significant difficulty. In addition, appellant submitted a hospital

[1] *Richard J. Murray*, Docket No. 06-152 (issued March 16, 2006), *petition for recon. denied* (issued July 6, 2006); *Richard J. Murray, Jr.*, Docket No. 00-257 (issued December 6, 2000), *petition for recon. denied* (issued June 5, 2001); *Richard Joseph Murray, Jr.*, Docket No. 01-1958 (issued September 24, 2002).

[2] Docket No. 01-1958 (issued September 24, 2002).

[3] Docket No. 06-152 (issued March 16, 2006).

[4] Docket No. 06-152 (issued July 6, 2006).

discharge signed by Dr. Harry Hawthorne, a Board-certified internist with a subspecialty of clinical cardio electrophysiology, dated July 28, 2003, listing appellant's discharge diagnosis as "inducible ventricular tachycardia with severe ischemic cardiomyopathy." Finally, appellant submitted a medical report by Dr. Zohra Khambatti, a Board-certified family practitioner, dated August 15, 2005, wherein he indicated that appellant had been under his care for seven years and was currently being treated for hyperlipidemia, severe ischemic cardiomyopathy with defibrillator insertion, depression, hypertension, chronic back pain and right rotator cuff repair. Dr. Khambatti noted that appellant was in stable condition at this time.

By decision dated October 13, 2006, the Office denied appellant's claim for reconsideration of the merits.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[5] provides that the Office may review an award for or against compensation under application by an employee who receives and adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[6]

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office regulations provide that the application for reconsideration 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 legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[7]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence that meets at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.[8]

ANALYSIS

Appellant did not submit any new relevant legal argument, nor did he allege that the Office erroneously applied or interpreted a specific point of law. Consequently, he is not entitled to a review of the merits of his claim based on the first and second requirements of section 10.606(b)(2).

[5] 5 U.S.C. § 8101 *et seq.*

[6] 20 C.F.R. § 10.605.

[7] 20 C.F.R. § 10.606.

[8] 5 U.S.C. §§ 8101-8193, 8128(a). The Board has found that the imposition of the one-year time limitations does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Act. *See Adell Allen (Melvin L. Allen)*, 55 ECAB 390 (2004).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board finds that the following evidence is repetitious of evidence already in the record and reviewed: the May 21, 1997 hospital records, the November 4, 1997 report by Dr. Sentell, medical reports dated June 22 and November 29, 1999 and December 22, 2000 by Dr. Po and the medical report by Dr. Pearce dated April 4, 2001. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case for further merit review.[9]

With regard to the remaining evidence, none of this evidence addresses the relevant issue. In the last merit decision dated April 23, 2003, the Office found that appellant had failed to submit medical evidence that established a relationship between appellant's employment and the claimed conditions. None of the new medical evidence addresses the issue of causal relationship. Dr. Smart noted that he was treating appellant for a heart condition, but he never linked this condition to conditions of appellant's employment. Dr. Hawthorne lists a discharge diagnosis dated July 28, 2003 but never discusses appellant's employment. Finally, Dr. Khambatti noted that he had treated appellant for seven years for hyperlipidemia, severe ischemic cardiomyopathy with defibrillator insertion, depression, hypertension, chronic back pain and right rotator cuff repair. However, he also does not address appellant's employment or the issue of causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[10]

Appellant has not established that the Office improperly denied his request for further review of the merits under section 8128(a) of the Act, because the evidence and argument he submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.[11]

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[9] *Daniel M. Dupor*, 51 ECAB 482 (2000).

[10] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[11] Appellant submitted new evidence on appeal. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 13, 2006 is affirmed.

Issued: April 6, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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