United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 07-937**
	)	**Issued: August 20, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Addison, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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 February 21, 2007 appellant filed a timely appeal from a November 29, 2006 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for reconsideration. Because more than one year has elapsed between the last merit decision dated August 24, 2005 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 denied appellant's request for reconsideration without conducting a merit review.

FACTUAL HISTORY

On January 21, 2005 appellant, then a 52-year-old letter carrier, filed an occupational disease claim alleging that he developed hip pain in the performance of duty. He stated that he walked more than 11 miles per day, much of it up and down stairs and in treacherous weather conditions, for five or six days per week. Appellant first became aware of his condition in

April 1998 and first related it to his employment in January 1999. He stopped work on September 30, 2004 and returned to modified duty on November 12, 2004.

In support of his claim, appellant submitted a January 4, 2005 report from Dr. Tina M. Nagle, a chiropractor, who diagnosed "chronic recurrent low back pain, chronic pain syndrome including mild-moderate depression." He also submitted a January 10, 2005 report from Linda J. Smith, a family nurse practitioner.

In a December 30, 2004 report, Dr. Elaine Tunaitis, a Board-certified internist and employing establishment contract physician, reported that she saw appellant for a return-to-work examination on December 20, 2004. She noted appellant's complaints of neck, back, hip and foot pain and explained: "All of these are long-standing conditions which have been treated prior to this as nonwork related." Dr. Tunaitis noted that appellant informed her that he would be filing separate claims for his back, hip and foot pain. She stated that appellant had not identified any specific incident to which his claimed work-related pain could be connected and noted that appellant's pain apparently worsened during a seven-week absence from work for a plantar fasciitis. Dr. Tunaitis concluded: "All in all [appellant] presents a picture of worsening depression manifesting as multiple physical complaints, without change whether he is working or not working. These complaints do not appear to be related to his workplace activities and have actually worsened while he has been out of work!"

On February 28, 2005 the Office requested additional information concerning appellant's claim. In a March 10, 2005 statement, appellant explained what he believed to be the causes of his condition. He also submitted a duty status report detailing his lifting restrictions and characterizing his condition as "hip pain."[1] In a February 10, 2004 diagnostic testing report, Dr. Leon Feldhamer, a Board-certified diagnostic radiologist, listed an impression of normal pelvis and bilateral hip examinations. The employing establishment provided a job description for appellant's city carrier position.

By decision dated August 24, 2005, the Office denied appellant's occupational disease claim.

On August 7, 2006 appellant, through his attorney, requested reconsideration of the Office's August 24, 2005 decision. He provided a brief detailing his arguments and also indicated that he was submitting two additional medical reports dated July 27 and August 15, 2005 from Dr. Michael Cilip, a Board-certified internist.[2] Appellant asserted: "In light of the similarity of the factors of federal employment implicated in the occupational disease claim assigned Office file number 022063683[3] and in the within matter assigned Office file number 022063682[4] the Office must consolidate the two claims under Office file number 022063682 and consider both the factual and medical evidence submitted with this reconsideration request in

[1] The physician's signature on the duty status report is illegible.

[2] Dr. Cilip's reports do not appear in the record.

[3] File number 022063683 refers to appellant's occupational disease claim alleging back pains.

[4] File number 022063682 refers to appellant's current occupational disease claim alleging hip pains.

adjudicating the consolidated claims." The employing establishment resubmitted reports from Dr. Tunaitis and Dr. Nagle and additional factual statements from appellant reiterating his previous characterizations of the etiology of his condition.

By decision dated November 29, 2006, the Office denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in using this discretion.[5] The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

> "(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]."[6]

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[7] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[8]

ANALYSIS

The Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review, as appellant did not meet any of the above listed criteria. On reconsideration, appellant cited Board precedent on the burden of proof in occupational disease cases and argued that he met his burden of proof. However, he did not assert that the Office misinterpreted any specific point of fact or law. Rather, appellant broadly argued that he had submitted sufficient evidence to establish his claim. He also did not advance a relevant legal

[5] 20 C.F.R. § 10.606(b)(2) (1999).

[6] *Id.*

[7] 20 C.F.R. § 10.608(b) (1999).

[8] *Annette Louise*, 54 ECAB 783 (2003).

argument not previously considered by the Office. Appellant prefaced his arguments on burden of proof by asserting that he was advancing new legal arguments not previously considered. However, the record reflects that his arguments that he met the burden of proof in an occupational disease claim were redundant, as the Office had previously considered such arguments;[9] therefore this argument does not constitute a new legal argument warranting a merit review.

Appellant also asserted that, due to the similarity of employment factors alleged in his present claim for hip pain to those in his separate claim for back pain, the Office should have doubled his two claims. Office procedures provide that cases should be doubled "when correct adjudication of the issues depends on frequent cross-reference between files."[10] While the procedures note that the Office may double claims in cases that do not involve the same condition or part of the body when the issues require frequent cross-referencing between files,[11] they also state that claim doubling should be avoided if possible and that, "if only a few cross-references will be needed, the cases should not be doubled."[12] Here, the underlying issue is medical in nature. The Board finds that appellant's procedural argument is not relevant as the issues in appellant's different claims appear discrete and do not appear to require the amount of cross-referencing contemplated by Office procedures.[13] Consequently, this argument is insufficient to show that the Office erroneously interpreted a point of law nor does it establish that appellant advanced a relevant legal argument not previously considered by the Office.

Accordingly, the Board finds that appellant did not assert that the Office misinterpreted a specific point of fact or law nor did he advance a new and relevant legal argument sufficient to require the Office to reopen his claim for a merit review.

Appellant claimed that he was submitting two additional medical reports dated July 27 and August 15, 2005 from Dr. Cilip. He presented arguments utilizing these reports in his brief. However, the reports do not appear in the record.[14] Consequently, appellant did not present new and relevant evidence not previously considered by the Office nor did he assert that the Office misinterpreted a specific point of fact or law or advance a new and relevant legal argument and thus the Office was not required to reopen appellant's claim for a merit review.

[9] 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. *James W. Scott*, 55 ECAB 606 (2004).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400. 8(c)(1) (February 2000).

[11] *Id.* at Chapter 2.400.8(c)(3).

[12] *Id.* at Chapter 2.400.8(d).

[13] The two claims that appellant asserts should be doubled, Office file numbers 022063682 for hip pain and 0022063683 for back pain deal with different parts of the body.

[14] Appellant did submit Dr. Cilip's July 27 and August 15, 2005 reports in support of his appeal before the Board. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that the Office properly denied appellant's reconsideration request without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2007
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