

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 06-1921
Issued: February 20, 2007**

Appearances:
Appellant, pro se
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 August 15, 2006 appellant filed a timely appeal of a May 8, 2006 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. In an August 20, 2001 decision, the Board found that the Office properly denied appellant's February 7, 2000 request for reconsideration of a February 16, 1999 hearing representative's decision. The hearing representative found that appellant's claimed bulging cervical disc was not caused by the accepted August 2, 1994 employment-related injuries. The Board found that the evidence

submitted in support of the reconsideration request was repetitive and cumulative in nature and insufficient to warrant reopening the claim for further merit review.¹ The facts and the history of the case, as set forth in the Board's prior decision are incorporated by reference.²

On November 6, 2002 appellant filed a claim for compensation (Form CA-7) for the period September 17 through December 4, 2002. In accompanying time analysis forms, appellant stated that she was disabled from October 22 to December 4, 2002. By letter dated November 22, 2002, the Office advised appellant that the claim was for the period beginning October 22, 2002. It addressed the medical evidence she needed to submit to establish her claim.

Appellant submitted a December 16, 2002 medical report of Dr. Conrad P. Weller, an attending Board-certified psychiatrist. He addressed appellant's August 2, 1994 employment-related emotional condition and her symptoms, which included progressive worsening of her susceptibility to stress. Dr. Weller stated that on October 22, 2002 appellant was threatened with disciplinary action for being absent without leave (AWOL) after she requested leave under the Family Medical Leave Act (FMLA). This reawakened and aggravated her chronic fears and distracts. Following this incident, Dr. Weller stated that she developed disruptive anxiety and uncontrollable anger associated with persistent depression and very disruptive insomnia. He believed that this aggravation could be permanent. Dr. Weller opined that appellant was intensely phobic of the workplace. He concluded that she was unable to resume her work duties due to persistent, major exacerbation of symptoms associated with her compensable emotional condition.

On December 17, 2002 appellant filed a CA-7 form for the period December 5, 2002 through January 10, 2003. She submitted Dr. Weller's October 31, 2002 progress note which further described the October 22, 2002 incident. Appellant was on vacation from October 11 to 20, 2002. On Monday, October 21, 2002 she called in to work and requested time off under FMLA due to back problems. On October 22, 2002 appellant called the employing establishment to request additional leave under FMLA. Dr. Weller stated that the employing establishment threatened her with disciplinary action for being AWOL and demanded medical documentation in support of her absence. He stated that she felt outraged and angry. Appellant experienced a significant exacerbation of anxiety which resulted in her being off duty on October 22, 2002 and remaining off duty on workers' compensation. Dr. Weller did not know when she would be able to regain control and return to work. Appellant was very irritable and continued to have difficulties controlling herself. Dr. Weller stated that, during their session, she ventilated excessively and he repeatedly encouraged her to put the situation in perspective. He concluded that appellant remained confused in this regard. In a December 5, 2002 treatment note, Dr. Weller reported appellant's symptoms which included continued extreme phobia of the work site.

¹ Docket No. 00-2500 (issued August 20, 2001).

² On August 2, 1994 appellant, then a 32-year-old city carrier, filed a traumatic injury claim alleging that on that date she strained her back and shoulders and experienced pain in her neck while in the performance of duty. She stated that, during the course of the day: she loaded and delivered the route; carried bundles of flyers; and the vehicle she used caused her difficulty in opening and closing both the driver and back doors. The Office accepted appellant's claim for cervical/thoracic strains and consequential adjustment disorder.

By decision dated January 3, 2003, the Office found that appellant did not sustain a recurrence of disability beginning October 22, 2002 causally related to her August 2, 1994 employment injuries. The evidence of record established that she attributed her condition to the intervening October 22, 2002 incident.³

In a letter dated December 8, 2003, appellant requested reconsideration. She contended that the medical evidence of record established that she sustained a recurrence of disability on October 22, 2002 causally related to her accepted employment-related emotional condition. Appellant submitted Dr. Weller's October 31, 1995 report, in which he opined that appellant's adjustment disorder with mixed anxiety and depressed mood were caused by the August 2, 1994 employment injuries. In a May 18, 2000 form report, he diagnosed "309.28" and set forth appellant's work restrictions. Dr. Weller's December 8, 2003 report which stated that the October 22, 2002 incident aggravated appellant's August 2, 1994 employment-related adjustment disorder with mixed anxiety and depressed mood. In a September 7, 2001 report, he reiterated his prior diagnoses and opined that appellant was totally disabled from April 1998 to February 1999 and January 19 to 31, 2000 due to work incidents.

By decision dated March 12, 2004, the Office denied modification of the January 3, 2003 decision. The evidence submitted by appellant failed to establish that she sustained a recurrence of disability due to a spontaneous change in her work-related conditions. The Office found that her disability was attributed to work factors that occurred on October 22, 2002.

On March 3, 2005 appellant requested reconsideration. She contended that her current emotional condition was caused by the accepted employment-related adjustment disorder with anxiety. Contrary to the Office's finding, Dr. Weller's October 31, 1995 and May 18, 2000 reports were pertinent to the alleged recurrence of disability as he stated that her condition would worsen if the employing establishment did not adhere to her work restrictions which it failed to do on several occasions. She submitted progress notes from Dr. Weller dated July 19, 2000 through March 22, 2005. This evidence addressed appellant's symptoms and stated that she was disabled for work. On February 14, 2005 Dr. Weller opined that the October 22, 2002 incident permanently aggravated appellant's work-related emotional condition because the employing establishment disregarded her work restrictions. He concluded that she sustained a recurrence of disability.

In an April 19, 2005 decision, the Office denied modification of the March 12, 2004 decision. The evidence of record failed to establish that appellant's current disability was caused by the August 2, 1994 employment-related conditions. The Office found that she attributed her disability to the intervening October 22, 2002 incident.

The Office received Dr. Weller's progress notes which covered intermittent dates from May 19, 2005 to February 21, 2006 and addressed appellant's symptoms regarding her emotional condition and medical treatment. It also received copies of form reports dated October 17, 2001

³ On January 14, 2003 appellant filed a traumatic injury claim alleging that he sustained a cervical condition while in the performance of duty on October 22, 2002. By decision dated November 17, 2003, the Office denied appellant's claim. In an April 8, 2005 decision, an Office hearing representative affirmed the November 17, 2003 decision.

and September 26, 2002 of Dr. Robert Martinez, a Board-certified neurologist, who stated that appellant suffered from chronic cervical thoracic and lumbosacral strains and insomnia. Dr. Martinez opined that she could work full time with physical restrictions but would need time off work from one to three days, one to two times per month. In a March 7, 2006 report, Dr. Weller diagnosed anxiety disorder and recurrent severe major depressive disorder. He opined that appellant was totally disabled for work due to the diagnosed conditions.

By letter dated April 18, 2006, appellant requested reconsideration. She argued that the October 22, 2002 incident worsened her employment-related conditions and resulted in her disability. Appellant further argued that her work-related conditions worsened prior to October 22, 2002 based on Dr. Weller's July 19 and August 1, 2000, May 25, 2001 and August 19, 2002 progress notes. She stated that this evidence supported a material change in her medical condition. In a March 30, 2006 progress note, Dr. Weller stated that appellant continued to be susceptible to intercurrent stresses. He reported her symptoms of depression, dejection and tearfulness and treatment plan. In an April 18, 2006 report, Dr. Weller opined that the October 22, 2002 incident aggravated appellant's employment-related adjustment impairment. He concluded that she sustained a recurrence of disability on the claimed date causally related to her accepted employment-related injury.

By decision dated May 8, 2006, the Office denied appellant's request for reconsideration. It found that the evidence and argument submitted were cumulative in nature and insufficient to warrant further merit review of the Office's prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

In an April 19, 2005 decision, the Office denied modification of the finding that appellant did not sustain a recurrence of disability beginning October 22, 2002 causally related to the August 2, 1994 employment-related cervical/thoracic strains and consequential adjustment

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

disorder. On April 18, 2006 she disagreed with this decision and requested reconsideration. The relevant underlying issue is whether appellant sustained a recurrence of disability beginning October 22, 2002 causally related to her accepted employment injuries.

Appellant contended that the October 22, 2002 incident worsened her employment-related conditions and resulted in her disability. She also contended that her work-related conditions worsened prior to October 22, 2002 based on Dr. Weller's progress reports. Appellant stated that this evidence supported a material change in her medical condition. Her contentions repeat those that she made in her March 3, 2005 reconsideration request regarding causal relation. They were previously considered by the Office. The Board has held that evidence or argument that repeats or duplicates evidence already in the case record and considered by the Office does not constitute a basis for further merit review.⁷ Because the Office previously considered appellant's arguments, they are repetitive in nature and insufficient to warrant further merit review.⁸

Dr. Weller's April 18, 2006 report stated that the October 22, 2002 incident aggravated appellant's employment-related adjustment impairment and that she sustained a recurrence of disability on that date causally related to her accepted employment-related injury. This evidence is insufficient to warrant a reopening of appellant's claim for further merit review. Dr. Weller previously stated in December 16, 2002 and February 14, 2005 reports and an October 31, 2002 progress note that appellant's employment-related emotional condition was aggravated by the October 22, 2002 incident, resulting in a recurrence of disability. As noted, evidence that repeats or duplicates evidence already in the case record and considered by the Office does not constitute a basis for further merit review.⁹ Because the Office previously considered Dr. Weller's opinion, his April 18, 2006 report is repetitive in nature and insufficient to warrant further merit review.¹⁰

Dr. Weller's progress notes, covering intermittent dates from May 19, 2005 to February 21, 2006, addressed appellant's emotional condition symptoms and medical treatment. His March 30, 2006 progress note also addressed her symptoms and found that she continued to be susceptible to intercurrent stresses. Dr. Weller's March 7, 2006 report stated that appellant was totally disabled for work due to anxiety disorder and recurrent severe major depressive disorder. Dr. Martinez's October 17, 2001 and September 26, 2002 form reports stated that appellant suffered from chronic cervical thoracic and lumbosacral strains and insomnia and that, although she could perform full-time work with restrictions, she would need to take time off work from one to three days, one to two times per month. This evidence does not address the relevant medical issue of whether appellant sustained a recurrence of disability beginning October 22, 2002 causally related to her August 2, 1994 employment-related injuries. Evidence which is irrelevant to the claim is insufficient to warrant a merit review of the case.¹¹ For these

⁷ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁸ *James A. England*, 47 ECAB 115, 119 (1995).

⁹ *Edward W. Malaniak*, *supra* note 7.

¹⁰ *James A. England*, *supra* note 8.

¹¹ *Mark H. Dever*, 53 ECAB 710 (2002).

reasons, the Board finds that Dr. Weller's progress notes and report and Dr. Martinez's reports are irrelevant and insufficient to warrant reopening appellant's claim for further merit review.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.¹²

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2006 decision of Office of Workers' Compensation Programs is affirmed.

Issued: February 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

¹² See *James E. Norris*, 52 ECAB 93 (2000).