

protruding telephone outlet and fell and hit her head on a desk. The claim was accepted for post-trauma syndrome with dizziness and cervical derangement.

In a medical report dated February 11, 2003, Dr. Frank S. Folk, appellant's treating surgeon, diagnosed appellant with cervical radiculopathy, lumbar radiculopathy and internal injury left knee. He indicated that appellant was "not expected to return to any gainful employment for the next 52 plus weeks." The Office referred appellant to Dr. Lester Lieberman, a Board-certified orthopedic surgeon, for a second opinion. In a report dated August 8, 2003, Dr. Lieberman listed his diagnosis as cervical sprain resolved. He noted that appellant's abdominal pain was not related to the work injury. Dr. Lieberman found that appellant was able to return to work with restrictions. In a March 30, 2004 report, Dr. Folk opined that appellant was totally disabled and that this was a permanent disability. On June 6, 2004 appellant was referred to Dr. John M. Lloyd, a Board-certified orthopedic surgeon, for a second opinion. In a report dated July 20, 2004, Dr. Lloyd indicated that appellant had a resolved cervical sprain. He indicated that he believed that the accepted condition was temporary and had now resolved, and that this took place five years after the accident. In order to resolve the conflict between the opinion of Dr. Folk, appellant's treating physician, and Drs. Lieberman and Lloyd, the second opinion physicians, with regard to whether appellant had any residuals from the 1987 accepted injury, the Office referred appellant to Dr. Michael J. Katz, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated August 30, 2004, Dr. Katz stated that appellant's cervical strain, lumbosacral strain and left knee contusion had resolved. He noted that she had no signs or symptoms of permanence relevant to her fall of January 8, 1987.

On November 5, 2004 the Office issued a notice of proposed termination of benefits finding that the evidence supported that appellant's work-related medical condition had resolved. No timely response was received and accordingly on December 6, 2004 the Office terminated appellant's compensation benefits effective that date.

On December 30, 2004 appellant requested reconsideration. In support thereof, she submitted Dr. Folk's medical report noting that, as of her December 11, 2004 visit, she remained totally disabled. Appellant also submitted a medical report dated December 22, 2004 wherein Dr. Louis C. Rose, a Board-certified orthopedic surgeon, listed his impressions as severe cervical spine sprain with possible radiculopathy, thoracic spine sprain, lumbar radiculopathy with possible herniated nucleus pulposus and internal derangement of the bilateral knees, right greater than left, with traumatically-induced chondromalacia patella secondary to fall. Dr. Rose recommended further studies.

By decision dated January 27, 2005, the Office denied modification of its December 9, 2004 decision.

On December 6, 2005 appellant requested reconsideration. In support thereof, she submitted an October 22, 1989 report by Dr. Rolland S. Parker, a consulting clinical neuropsychologist, noting generalized brain damage manifested by loss of mental ability in all measured areas, depressive reaction, manifested by dysphoric mood, lack of confidence, dull effect and loss of morale related to the January 8, 1987 employment injury. Appellant also submitted a February 11, 2005 magnetic resonance imaging (MRI) scan which was interpreted as showing disc herniation at L4-5 and broad nonfocal disc bulge at L4-5. Finally, she submitted a

follow-up report based on a March 2, 2005 examination wherein Dr. Rose diagnosed cervical herniated nucleus pulposus with a component of double crush syndrome affecting the bilateral upper extremities, thoracic spine sprain with possible thoracic derangement, lumbar herniated nucleus pulposus and internal derangement of the bilateral knees with medial and lateral meniscal tear with traumatically-induced chondromalacia patella. Dr. Rose noted that he has discussed with appellant that the symptoms to both knees have been persistent and ongoing since her injury in 1987. He advised that she was not a candidate for returning to full work duties, but may perform sedentary type work.

By decision dated March 2, 2006, the Office found that appellant's request for reconsideration was not sufficient to warrant a merit review of the decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides that the Office may review an award for or against compensation under application by an employee who receives an 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.²

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.³

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.⁴

ANALYSIS

In the instant case, appellant's claim was accepted for post-trauma syndrome with dizziness and cervical derangement. Based on the opinion of the impartial medical examiner, Dr. Katz, the Office terminated appellant's benefits on December 6, 2004. In a decision dated January 27, 2005, the Office denied modification of its December 6, 2004 decision.

¹ 5 U.S.C. § 8101 *et seq.*

² 20 C.F.R. § 10.605.

³ 20 C.F.R. § 10.606.

⁴ 5 U.S.C. §§ 8101-8193, 8128(a). The Board has found that imposition of the one-year time limitation 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)).*

In support of her request for reconsideration, appellant submitted a report by Dr. Rose wherein he diagnosed cervical herniated nucleus pulposus with a component of double crush syndrome affecting the bilateral upper extremities, thoracic spine sprain with possible thoracic derangement, lumbar herniated nucleus pulposus and internal derangement of the bilateral knees with medial and lateral meniscal tear with traumatically-induced chondromalacia patella. Dr. Rose noted that appellant's symptoms have been persistent and ongoing since her 1987 injury. The Board finds that, as the Office accepted post-traumatic syndrome with dizziness and cervical derangement, Dr. Rose's report is irrelevant as the diagnosed conditions contained in his report were not accepted as employment related. As such, this report is insufficient to warrant a merit review.

Dr. Parkers' opinion of October 22, 1989 expresses his opinion at that time and does not address the issue at hand, *i.e.*, whether the Office properly terminated appellant's benefits on December 4, 2004 as he no longer had residuals from the 1987 accident.

The MRI scan submitted by appellant did not address the threshold issue of termination.

On appeal appellant's attorney contends that the Office did not properly evaluate the medical evidence of record when it terminated appellant's compensation benefits and other arguments concerning the merits of the termination which the Office has not previously considered. As appellant's attorney presented these arguments for the first time on appeal, the Board finds that it is precluded from addressing them.⁵

CONCLUSION

The Board finds that 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).

⁵ 20 C.F.R. § 501.2(c). Appellant may resubmit this argument to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2006 is affirmed.

Issued: June 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