United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 06-951**
	)	**Issued: March 2, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 21, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' November 30, 2005 nonmerit decision denying his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated April 21, 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. §§ 501.2(c) and 501.3.

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

On July 25, 1989 appellant, a 42-year-old casual mail carrier, sustained an injury to his right knee when he tripped over a railroad tie while delivering mail. His claim was accepted for a tear of his right anterior cruciate ligament and arthroscopic surgeries. On the date of injury appellant was also employed as an armed services nuclear security officer.

On April 8, 1998 the Office issued a loss of wage-earning capacity (LWEC) decision, based on appellant's actual earnings as an unarmed security officer. On December 30, 1999 the Office vacated its prior decision, finding that the pay rate used to calculate the entitlement was incorrect. By decision dated April 20, 2000, the Office denied entitlement to all continuing medical and wage-loss benefits on the grounds that appellant's injury-related condition had ceased. In an October 3, 2001 decision, the Office vacated its April 20, 2000 decision, determining that entitlement to benefits was to be reinstated.

In a merit decision dated April 21, 2004, the Office modified appellant's wage-earning capacity determination to reflect his ability to earn wages as a computer operator. The Office found that the original LWEC determination was based on an incorrect pay rate. The Office determined that the correct pay rate for compensation purposes was $440.00 per week, rather than $128.00 per week and that a retroactive adjustment should be made to appellant's compensation payments. The Office concluded that appellant was entitled to receive compensation on the same basis as a regular, full-time employee, as he had demonstrated the ability to work full time. The Office also found that the job chosen on which the rating had been made was incorrect, due to the training appellant had received through vocational rehabilitation, which was geared to a computer operator or programmer. The vocational rehabilitation counselor concluded that, based upon his experience, education, medical restrictions and a labor market survey, appellant was qualified for the position of computer operator and that sufficient positions were reasonably available in his commuting area. Relying on the report of the vocational rehabilitation counselor, the Office computed appellant's gross compensation for LWEC based on his ability to earn $17,702.00 per year as a computer operator. The Office determined that the lower paying position of computer operator should be used to establish the wage-earning capacity, since additional training had not been approved and appellant would be able to complete the remainder of the program on his own.

On February 9, 2005 appellant requested reconsideration of the Office's April 21, 2004 decision. He contended that the vocational rehabilitation counselor had erroneously used a part-time hourly rate to establish his wage-earning capacity; that his wage-earning capacity should have been based on the ability to work as a computer programmer; that it was unreasonable to conclude that a 49-year-old man with two degrees in computer information systems was capable of earning only $17,702.00 per year; and that, but for his injury, he would be earning $40,000.00 annually as a nuclear security officer. In support of his request, appellant submitted a June 15, 1995 transcript from Richland Community College; a copy of December 28, 1993 case notes from the vocational rehabilitation specialist; a list of companies identifying potential computer programming positions available in 1994; a copy of a January 23, 1992 labor market survey; a copy of July 28, 1993 case status notes; references to citations under the Federal Employees' Compensation Act regarding wage-earning capacity determinations; and a copy of an excerpt from an undated labor market survey;

On March 9, 2006 the Office denied appellant's reconsideration request without reviewing the merits of the claim, finding that appellant had neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of the Act,[1] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[2] which provides that a claimant may obtain review of the merits of his claim. The written application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office; or constitutes relevant and pertinent new evidence not previously considered by the Office.[3]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[4]

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.[5]

ANALYSIS

Appellant's February 9, 2005 request for reconsideration neither showed that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered. He submitted references to citations under the Act and contended that the Office incorrectly calculated his wage-earning capacity. However, appellant has not shown how the Office erred, nor has he advanced a relevant legal argument not previously considered. He merely disagrees with the Office's conclusion. Appellant contends that the vocational rehabilitation counselor erroneously used a part-time hourly rate to establish his wage-earning capacity. The Board notes that the Office addressed this error in its April 21, 2004 decision, concluding that appellant was entitled to receive compensation on the same basis as a regular, full-time employee, as he had demonstrated the ability to work full time. Therefore, this contention is without merit.

Appellant also contends that it was unreasonable to conclude that a 49-year-old man with two degrees in computer information systems was capable of earning only $17,702.00 per year and that, but for his injury, he would be earning $40,000.00 annually as a nuclear security officer. However, in establishing the wage-earning capacity, the Office considered the training appellant received through vocational rehabilitation, which was geared to a computer operator or programmer. The Office also considered the vocational rehabilitation counselor's report, which

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Id.*

[4] 20 C.F.R. § 10.608(b).

[5] *See Helen E. Paglinawan,* 51 ECAB 591 (2000).

indicated that, based on his experience, education, medical restrictions and a labor market survey, appellant was qualified for the position of computer operator and that sufficient positions were reasonably available in his commuting area.

Finally, appellant contends that his wage-earning capacity should have been based on the ability to work as a computer programmer. Again, the Office previously considered this issue. The Board notes that, in basing appellant's wage-earning capacity on the constructed position of computer operator, rather than computer programmer, the Office selected the lower paying of the two positions, thereby, reducing appellant's wage-earning capacity and effectively increasing appellant's compensation. Therefore, appellant was not adversely affected by this decision. The Board finds that appellant has failed to satisfy either of the first two requirements under section 10.606(b)(2).

Appellant also failed to satisfy the third requirement listed in section 10.606(b)(2). He did not submit any relevant and pertinent new evidence not previously considered by the Office. Appellant submitted a transcript from Richland Community College, reflecting computer courses completed. The transcript merely supports the Office conclusion that appellant was qualified for the position of computer operator. As indicated above, appellant's argument that he was qualified for the higher paying position of computer operator, is against his own best interests. Moreover, in its April 21, 2004 decision, the Office considered the fact that appellant might complete his computer training on his own. The remaining documents submitted in support of appellant's request for reconsideration are either copies of documents or repetitious of evidence, previously considered by the Office. 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.[6]

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's February 9, 2005 request for reconsideration without conducting a merit review of the claim.

[6] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board