United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 07-806**
	)	**Issued: September 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

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 February 1, 2007 appellant filed a timely appeal from a November 30, 2006 nonmerit decision denying her request for reconsideration. Because more than one year has elapsed between the last merit decision dated September 29, 2005 and the filing of this appeal on February 1, 2007, the Board lacks jurisdiction to review the merits of her 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 her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 11, 2003 appellant, then a 51-year-old distribution clerk, filed a traumatic injury claim alleging that on December 1, 2003 she felt a pop in her left elbow while placing a package into a cart. The Office accepted her claim for bilateral epicondylitis. Appropriate

treatment and compensation benefits were authorized. Appellant subsequently applied for retirement disability, which was approved January 2006.

On January 18 and February 14, 2005 the employing establishment offered appellant a position as a modified distribution window clerk, based on the restrictions Dr. Edward Van Tassel, an osteopath, had outlined. In a report dated April 7, 2004, Dr. Van Tassel released appellant to work with certain restrictions. The restrictions included no lifting, pushing, pulling and grasping over five pounds. In a May 19, 2004 report, Dr. Van Tassel presented his examination findings and opined that appellant was not a surgical candidate and her condition was fixed and stable. In a December 30, 2004 report, he provided an assessment of bilateral forearm and elbow pain of undetermined etiology and probably diffuse tendinitis. Dr. Van Tassel stated that he did not know of any other modalities he could apply as an orthopedic surgeon and was concerned that appellant's recent onset of allergies and intolerance to medicine may be an immunologic or neurologic source of her symptoms. He advised that the work restrictions were based on pain and should remain as stated unless a physical capacity evaluation dictated otherwise.

By letter dated February 16, 2005, the Office found the modified distribution clerk position suitable.

On February 21, 2005 appellant requested authorization to change physicians. She indicated that Dr. Van Tassel would not respond to her telephone calls or other correspondence, nor did he follow through on correspondence for her to see other specialists.

On March 17, 2005 appellant returned to work. On March 22, 2005 she stopped work. On March 23, 2005 appellant underwent a functional capacity evaluation which Dr. Van Tassel recommended. The evaluation indicated that she could lift, pull, carry and grasp 5 to 15 pounds.

By decision dated March 25, 2005, the Office denied appellant's request to change physicians from Dr. Van Tassel. It found that the evidence did not demonstrate that she was not receiving proper and adequate care from Dr. Van Tassel.

After the Office advised appellant that the offered position was suitable and within her medical limitation, she did not return to the job that she stopped performing on March 22, 2005. By decision dated August 8, 2005, the Office terminated appellant's compensation benefits on the grounds that she abandoned suitable work.

Appellant requested review of the written record. By decision dated September 29, 2005, an Office hearing representative affirmed the Office's decisions dated March 25 and August 8, 2005.

In a letter dated October 11, 2005, appellant requested a change to Dr. Danke or one of his associates, as Dr. Van Tassel was no longer in the area. By letter dated October 21, 2005, the Office approved appellant's request to change physicians to Dr. Danke. In a letter dated November 15, 2005, appellant notified the Office that Dr. Danke was getting ready to retire. She requested that the Office authorize Robert Barber, a physician's assistant, until Dr. Danke's

replacement, Dr. Hufman, joined the practice. In a letter dated November 29, 2005, the Office advised appellant that Dr. Hufman was authorized to treat her and that she could see Mr. Barber in the meantime.

In a letter dated September 11, 2006, appellant requested reconsideration of the September 29, 2005 decision. She requested that the Office recognize the treatment Dr. Danke, Dr. Hufman and Mr. Barber provided and consider their opinions. Appellant referenced several medical reports from March 2005 which she stated were sufficient to reverse the Office's September 29, 2005 decision concerning her failure to accept suitable work. She also provided copies of medical reports from March 17, 2004 to March 30, 2005, which were previously submitted and considered. New evidence consisted of a December 8, 2005 report from Mr. Barber, a physician assistant, and a January 6, 2006 medical report from Dr. Hufman, a Board-certified family practitioner. In his January 6, 2006 report, Dr. Hufman provided an assessment of bilateral arm pain. He opined that appellant's injury was resolved and she had a type of hyperalgesia from the nerve.

By decision dated November 30, 2006, the Office denied appellant's request for reconsideration on the grounds that she had failed to raise a substantive legal question and had not presented new and relevant evidence.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) 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]

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 relevant 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 and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[4] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

[1] 5 U.S.C. § 8101 *et seq.*

[2] 20 C.F.R. § 10.605.

[3] 20 C.F.R. § 10.606.

[4] *Donna L. Shahin*, 55 ECAB 192 (2003).

[5] 20 C.F.R. § 10.608.

ANALYSIS

In her request for reconsideration, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. She requested that the Office recognize Dr. Danke, Dr. Hufman and Mr. Barber, a certified physician's assistant, as her physicians. In letters dated October 21 and November 29, 2005, the Office approved appellant's change of physicians to Dr. Danke and Dr. Hufman. It also stated in its November 29, 2005 letter, that it would authorize treatment with Mr. Barber, a physician's assistant. Thus, appellant's argument is moot as the Office had previously granted her request to change physicians prior to the reconsideration request. Her assertions also do not offer a relevant legal argument in support of her contention that the Office improperly terminated her monetary benefits. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[6]

With respect to the third requirement under section 10.606(b)(2), appellant did not submit any relevant and pertinent new evidence not previously considered by the Office.[7] In support of her reconsideration request, appellant cited to and provided copies of medical reports from March 17, 2004 to March 30, 2005 which were of record before the Office's September 29, 2005 decision and, thus, previously considered. 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.[8] Appellant also submitted a December 8, 2006 report from Mr. Barber. This report is of no probative medical value as the Board has found that a physician's assistant is not a physician as defined under the Act and, therefore, is not competent to provide medical evidence.[9] The January 6, 2006 report from Dr. Hufman, while new, is not relevant to the issue of whether the Office properly terminated appellant's wage loss for abandonment of suitable work. Dr. Hufman did not specifically address whether appellant was able to perform the job of modified distribution clerk at the time that the Office found that appellant had abandoned such position. Rather, he found the work-related injury to be resolved and he felt that appellant's condition was more a type of hyperalgesia from the nerve.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2). Accordingly, the Office properly denied appellant's request for merit review.

[6] 20 C.F.R. § 10.606(b)(2).

[7] 20 C.F.R. § 10.608(b)(1) and (2).

[8] *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984).

[9] 5 U.S.C. § 8101(2); *see Ricky S. Storms*, 52 ECAB 349 (2001).

CONCLUSION

The Board finds that the Office properly denied appellant's request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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