United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 08-173**
	)	**Issued: April 23, 2008**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Ogden, UT, 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 October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 1, 2007 nonmerit decision denying her request for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was a May 19, 2006 decision denying her traumatic injury claim. Because more than one year has elapsed between the Office's last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On April 3, 2006 appellant, a 36-year-old motor vehicle operator, filed a traumatic injury claim alleging that, while at work on March 30, 2006, she sustained an injury to her left foot while breaking in a new pair of steel-toed shoes. She stated that she felt as though she had pulled a muscle or twisted something on the top of her left foot.

Appellant submitted reports from E. Sandberg, a physician's assistant. In a March 30, 2006 report, Mr. Sandberg related appellant's statement that she had experienced a sudden onset of pain in her left foot while walking in new shoes at work. He diagnosed left foot strain. In a March 30, 2006 physician's initial report of work injury or occupational disease, Mr. Sandberg indicated that appellant's left foot had suddenly started hurting, without trauma. An April 4, 2006 report reflected that Mr. Sandberg had examined appellant for the first time on March 30, 2006 for sudden onset of pain to the top of her left foot, which had developed at work while she was wearing new steel-toed shoes. He reported that appellant's x-ray was negative for a fracture. In follow-up reports dated April 5, 2006, Mr. Sandberg reiterated his diagnosis of left foot strain. Stating that appellant's condition had improved since her work injury seven days prior, he noted that appellant had tenderness in her left foot and a mild limp. The record also contains March 30, 2006 prescriptions for shoes and an x-ray.

By decision dated May 19, 2006, the Office denied appellant's claim. It accepted that the claimed incident occurred. However, noting that a physician's assistant is not a "physician" as defined under the Federal Employees' Compensation Act, the Office found that there was no probative medical evidence providing a diagnosis that could be connected to the event.

On May 30, 2006 appellant requested reconsideration of the May 19, 2006 decision. She contended that her physician's reports clearly identified her injury as work related. Appellant submitted a May 17, 2007 statement indicating that the work incident occurred while she was trying to break in new shoes.

In support of her reconsideration request, appellant submitted copies of Mr. Sandberg's March 30, April 4 and 5, 2006 reports, which were previously of record and reviewed by the Office. She also submitted a March 30, 2006 work status report from Mr. Sandberg, which provided a diagnosis of left foot strain; an undated, illegible work status report from Mr. Sandberg; and a March 30, 2006 authorization for treatment.

By decision dated June 1, 2007, the Office denied appellant's request for reconsideration. Noting that the evidence submitted was duplicative and irrelevant, the Office found that her request did not warrant merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[2] Office regulations provide that the evidence or argument submitted by 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.[3] 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.[4] 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 on the merits.[5]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7]

ANALYSIS

Appellant's April 30, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, 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).

In support of her request for reconsideration, appellant submitted copies of reports from Mr. Sandberg, a physician's assistant, which were previously of record and considered by the Office. This evidence is cumulative and duplicative in nature and does not constitute a basis for reopening her case.[8] The remaining evidence submitted consisted of two work status reports from Mr. Sandberg and a March 30, 2006 authorization for treatment. These documents are not relevant to the issue in this case. In its May 19, 2006 decision, the Office found that there was no probative medical evidence providing a diagnosis that could be connected to the established event. The authorization for medical treatment is not a medical report, signed by a physician and

[2] 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).

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Id*. at § 10.607(a).

[5] *Id*. at § 10.608(b).

[6] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[8] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

therefore is irrelevant. As a physician's assistant does not qualify as a "physician" under the Act, Mr. Sandberg's reports do not constitute probative medical evidence and are also irrelevant.[9] Additionally, they merely repeat information contained in documents previously received and reviewed by the Office and are, thus, cumulative and duplicative in nature.[10] The Board finds that these documents do not constitute relevant and pertinent new evidence not previously considered by the Office.[11] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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) and properly denied her April 30, 2006 request for reconsideration.

CONCLUSION

The Board finds that 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).

[9] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). § 8101(2) provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Id*.

[11] *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2008
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