

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
White Plains, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-749
Issued: December 4, 2008**

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

Oral Argument September 23, 2008

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated October 16, 2007, denying her request for further merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The most recent merit decision of the Office is dated August 18, 2006 when it terminated appellant's compensation benefits effective March 22, 2003. Because more than one year has elapsed between the last merit decision of the Office and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.¹ In a September 23, 2005 decision, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective March 22, 2003. The Board also found that she did not meet her burden of proof to establish that she had any injury-related disability or residuals after March 22, 2003 causally related to the employment injury. The facts and the history as set forth in the Board's prior decision are incorporated by reference herein.

In separate letters dated May 15 and 24, 2006, appellant requested reconsideration and submitted additional evidence. She alleged that the report of the impartial medical examiner, Dr. Benjamin A. Nachamie, was not rationalized and insufficient to resolve the conflict. Appellant alleged that the physician's findings pertaining to genetics and obesity were "without merit." She alleged that she continued to have residuals of her employment-related injuries which included her preexisting cervical discogenic and lumbar disease.

Appellant submitted additional reports from Dr. Sana L. Bloch dated September 29, 2005 and January 31, 2006. Dr. Bloch opined that appellant remained permanently and totally disabled as a result of her cervical discogenic and lumbar discogenic disease. Appellant also submitted copies of previously submitted reports, including a May 15, 2003 operative report from Dr. John K. Houten, a Board-certified neurologist, who performed a cervical discectomy on that same date.

By decision dated August 18, 2006, the Office denied modification of its previous decision. It found that the referee opinion was the weight of the medical evidence. Additionally, the Office noted that appellant's claim was accepted for the orthopedic conditions of lumbosacral and cervical sprains and not accepted for any cervical conditions.

By letter dated July 20, 2007, appellant requested reconsideration. She essentially reiterated her previous arguments. Appellant contended that she had already presented documentation from her physicians that showed that her employment-related conditions continued. She also alleged that there was no new injury on February 29, 2000. Appellant repeated her disagreement with the report of the impartial medical examiner, Dr. Nachamie. She also requested that the Office compare her case with other cases.

By decision dated October 16, 2007, the Office denied appellant's request for reconsideration without a review of the merits. It found that her request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section

¹ Docket No. 05-331 (issued September 23, 2005), *petition for recon denied* (issued February 3, 2006).

² 5 U.S.C. § 8128(a).

10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [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) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the termination of her benefits and requested reconsideration on July 20, 2007 asserting that she continued to have medical residuals related to her accepted injury. The underlying issue is medical in nature; whether appellant continued to experience residuals from her accepted work-related injury. However, appellant did not submit any relevant or pertinent new evidence not previously considered by the Office.

In her July 20, 2007 request for reconsideration, appellant reiterated her previous arguments. She repeated her contentions that she had already presented documentation from her physicians which showed that her employment-related conditions continued. Appellant also expressed her disagreement with the findings of the impartial medical examiner, Dr. Nachamie. The Board finds that this evidence was already of record and is cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

Appellant argued that there was no new injury on February 29, 2000 and requested that the Office compare her case with other cases. The Board notes that these arguments are not relevant to whether she continued to be disabled due to her accepted employment condition, which is a medical issue. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at 10.608(b).

⁵ See *Betty A. Butler*, 56 ECAB 545 (2005).

⁶ *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

Appellant did not provide any relevant and pertinent new evidence to establish that she continued to be disabled due to her accepted employment-related conditions. Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her 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 under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 16, 2007 is affirmed.

Issued: December 4, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board