

In a second opinion report dated March 15, 2006, Dr. H. Harian Bleecker, a Board-certified orthopedic surgeon, stated that appellant appeared to have recovered from the acute herniation he sustained due to the May 1990 work injury. He advised that appellant basically had no radiating pain at that time. Dr. Bleecker noted that appellant did have objective findings of sensory hypalgesia over the L4 root distribution in the anterolateral right thigh; however, he opined, based on his examination, that appellant could perform an eight-hour workday, with occasional kneeling, squatting, bending and lifting of up to at least 25 pounds on an objective basis. Appellant showed no signs of nerve root involvement, radiculopathy or radiculitis.

By decision dated May 5, 2006, the Office terminated appellant's entitlement to compensation finding, based on Dr. Bleecker's opinion, that appellant's accepted herniation had resolved and that he was capable of performing the duties of his date-of-injury job. It also found that he no longer required chiropractic care.

On July 27, 2006 appellant requested reconsideration. He did not submit any additional evidence.

By decision dated August 16, 2006, the Office denied appellant's application for review on the ground that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated February 5, 2007, appellant requested reconsideration. He submitted a January 17, 2007 report from Dr. Jon Greenfield, Board-certified in orthopedic surgery, who examined appellant on previous occasions, reviewed his history of treatment and expressed his disagreement with Dr. Bleecker's March 15, 2006 opinion. Dr. Greenfield stated:

"With regard to my previous opinion, I indicated that the actual herniated disc had resolved, but there is a damaged disc base producing degenerative arthritis at the L5-S1 disc space. When a disc herniates and is damaged, the disc herniation may resolve but the disc space is permanently damaged. The disc space collapses and ultimately there is narrowing of the disc space. The medical condition itself has not resolved.

"The magnetic resonance imaging [MRI] scans clearly show that the disc is permanently damaged, but that permanent damage is the result of the injury that [appellant] sustained on May 8, 1990. In my May 30, 2001 report, I indicated that the MRI scan showed disc desiccation and mild narrowing without an extruded disc at L5-S1, with degenerative narrowing at L4-5. I indicated that in my opinion, the massive herniation noted at L5-S1 had resolved but that the results of that herniation was damage to the disc that has now produced a severe degenerative condition and that this degenerative condition is the result of the work-related injury of May 8, 1990."

"I have reviewed Dr. Bleecker's report. It is unreasonable for him to claim that the current degeneration of the discs at L4-5 and L5-S1 is the result of the natural progression of massive disc herniation when [appellant] had a massive disc herniation at L5-S1 and a respectively large disc herniation at L4-5. This is an

unreasonable medical opinion and not supported by the facts. The facts clearly support a massive disc herniation with resulting degenerative arthritis of the lumbar spine at L5-S1. Had [appellant] not had this massive disc herniation, he would not currently have the large amount of degenerative arthritis present in the lower back. It is limiting his ability to work.

“[Appellant’s] current back pain is being controlled by chiropractic care under the care of Dr. Misrobian. If he does not have that care, his degeneration will progress and [appellant] will probably end up having to have some major spinal surgery.”

By decision dated February 22, 2007, the Office denied appellant’s application for review on the ground that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹ 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.² When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.³

ANALYSIS

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant’s case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

In the present case, appellant requested reconsideration of the Office’s May 5, 2006 decision terminating compensation on the grounds that his herniated disc condition had resolved. In support of his request, appellant submitted Dr. Greenfield’s January 17, 2007 report which contained a review of the medical evidence and an extensive, rationalized medical opinion that appellant still had residuals from his accepted 1990 employment injury. The Board finds that this evidence constitutes relevant and pertinent evidence not previously considered by the Office in regard to the issue of whether appellant had any continuing disability resulting from his accepted employment conditions. Therefore, the refusal of the Office to reopen appellant’s case for further consideration of the merits of his claim constituted an abuse of discretion.⁴ The

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ *Joseph W. Baxter*, 36 ECAB 228, 231 (1994).

⁴ *Carol Cherry (Donald Cherry)*, 47 ECAB 658 (1996).

Board therefore reverses the February 22, 2007 decision and the case is remanded for a review of the merits of appellant's claim and any other proceedings deemed necessary by the Office, to be followed by an appropriate decision.

CONCLUSION

The Board finds that the Office abused its discretion by refusing to reopen appellant's case for further consideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2007 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for a review of the merits of appellant's claim and any other proceedings deemed necessary by the Office to be followed by an appropriate decision.

Issued: January 22, 2008
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