

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Reading, MA, Employer)

**Docket No. 07-2004
Issued: January 25, 2008**

Appearances:
William E. Shanahan, Esq., for the appellant
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 July 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated June 29, 2007, denying her request for further merit review of her claim. Because more than one year has elapsed between the Office's most recent merit decision dated January 18, 2006 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 pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In an August 4, 2006 decision, the Board affirmed the January 18, 2006 decision of the Office hearing representative,

¹ Docket No. 06-935 (issued August 4, 2006), *petition for recon., denied* (issued January 17, 2007).

finding that appellant did not sustain an injury in the performance of duty on September 11, 2004. The facts and history contained in the prior appeal are incorporated by reference.

Following the Board's August 4, 2006 decision, appellant submitted a November 16, 2005 report from Dr. Savita Patil, Board-certified in internal medicine, who noted that she was seen on September 17, 2004 for follow up to low back pain which occurred following an injury at work on September 11, 2004. The history reflected that she moved a heavy parcel. Dr. Patil advised that appellant developed right-sided low back pain with radiation to the right leg. The onset of her symptoms was related to the reported injury. Dr. Patil advised that the musculoskeletal and neurological findings on September 17, 2004 were within normal limits and appellant was diagnosed with a lumbar strain. Appellant had previously been treated for lumbar strain in April 2003 and she had improved with treatment. She noted some low level residual pain. Due to the chronic nature of the symptoms, coupled with the new symptoms, appellant underwent a magnetic resonance imaging (MRI) scan. It revealed a "paracentral bulge at the L3-4 level nerve roots which effaces the anterior thecal sac but does not impinge on the central roots or exiting nerve roots."

In a March 27, 2006 report, Dr. Elizardo P. Carandang, Board-certified in physical medicine and rehabilitation, indicated that he first saw appellant on October 1, 2004 for persistent back pain. Appellant reported that she had experienced pain across the back and radiating towards the top of the right buttock and occasionally along the posterior thigh and calf. Dr. Carandang noted that she had an MRI scan on September 21, 2004 which revealed paracentral bulging at the L3-4 level, which effaced the thecal sac but did not impinge on the central or exiting nerve roots. He did not obtain a history of injury from appellant's first visit until he received subsequent notes from her in which she stated that she sustained an injury at work on September 11, 2004. Appellant related that she was "counting parcels in a hamper, moved a large one and felt a pull and sharp pain in low back." Dr. Carandang noted that appellant had no neuromuscular deficit on her clinical examination, but she had symptoms pointing to a right S1 radiculopathy, which were not in accordance with the MRI scan findings. Dr. Carandang indicated that conservative treatments did not help appellant improve. He opined that appellant's low back pain on September 11, 2004 resulted in a lumbosacral sprain and a pelvogluteal sprain with underlying degenerative disc disease.

On January 23, April 2 and 12, 2007, appellant's representative requested reconsideration.

By decision dated June 29, 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 was insufficient to warrant further merit review.

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 10.606(b)(2) of the implementing federal regulations. It 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;

“(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 denial of her claim and requested reconsideration. The underlying issue on reconsideration was whether appellant submitted sufficient medical evidence to establish that her work caused an injury on September 11, 2004. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she sustained an injury in the performance of duty on September 11, 2004. She did not submit any new medical evidence with regard to whether she sustained an injury in the performance of duty on September 11, 2004.

In support of her claim, she submitted a November 16, 2005 report from Dr. Patil, Board-certified in internal medicine. Dr. Patil noted that appellant was seen on September 17, 2004 for follow up related to low back pain which she reported had occurred following an injury at work on September 11, 2004 which occurred after she moved a heavy parcel and he advised that the onset of her symptoms was related in terms of time to the reported injury. However, this report did not provide any further support for causal relationship beyond that noted in the physician's April 8 and October 11, 2005 reports. Thus, while the November 16, 2005 report is new, it is not relevant as it is duplicative of his prior reports with regard to causal relationship. Evidence or

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁵

In a March 27, 2006 report, Dr. Carandang repeated the contents of his October 1, 2004 and March 31, 2005 reports. He noted that she sustained an injury at work on September 11, 2004 which occurred when she was “counting parcels in a hamper, moved a large one and felt a pull and sharp pain in low back.” While Dr. Carandang opined that appellant’s low back pain on September 11, 2004 resulted in her lumbosacral sprain and a pelvogluteal sprain with underlying degenerative disc disease, this is duplicative of his March 31, 2005 report in which he checked the box “yes” that appellant’s condition was causally related to her employment. He did not provide any new details on causal relationship. As noted, evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁶

Consequently, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office; nor has she shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously considered by the Office. Therefore, the Office properly denied her request for reconsideration without conducting a merit review of the claim.

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).

⁵ *L.C.*, 58 ECAB ____ (Docket No. 06-1928, issued May 31, 2007); *J.P.*, 58 ECAB ____ (Docket No. 06-1274, issued January 29, 2007).

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2007 is affirmed.

Issued: January 25, 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