

ISSUE

The issue is whether the Office properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 56-year-old former electronic worker, sustained employment-related injuries to his back on August 22, 1984 and October 25, 1988. Both traumatic injuries were accepted for lumbosacral sprain (13-0745850 and 13-0883447). By decision dated June 11, 2003, the Office terminated appellant's benefits effective June 15, 2003 on the grounds that he no longer had residuals from the 1984 and 1988 injuries. The Office based its decision on the July 24, 2002 report of Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon and Office referral physician. It subsequently denied reconsideration on July 25, 2003 and denied modification on April 22, 2004, May 5, 2005 and June 23, 2006.

Appellant filed his latest request for reconsideration on May 1, 2007. The request was accompanied by a June 24, 2003 work capacity evaluation, a November 18, 2003 functional capacity evaluation, December 5, 2003 treatment notes from Dr. Jerome A. Schofferman, and a February 27, 2007 report from Dr. Leslie Schofferman.³ Dr. J.A. Schofferman diagnosed lumbar degenerative disc disease and Dr. L. Schofferman diagnosed chronic pain syndrome and L5-S1 central disc protrusion with chronic discogenic pain. Both opined that appellant was totally disabled.

In a decision dated August 1, 2007, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

The Office has the discretion to reopen a case for review on the merits.⁴ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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 Office.⁵ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

³ Dr. J.A. Schofferman and Dr. L. Schofferman are brothers and both physicians are Board-certified in internal medicine.

⁴ 5 U.S.C. § 8128(a) (2000).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

ANALYSIS

Appellant's May 1, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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 his claim based on the first and second above-noted requirements under section 10.606(b)(2).⁷

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit relevant and pertinent new evidence with his May 1, 2007 request for reconsideration. The June 24, 2003 work capacity evaluation and the November 18, 2003 functional capacity evaluation were already part of the record and had previously been considered by the Office. While Dr. Dr. J.A. Schofferman's December 5, 2003 treatment notes are new to the record, these notes are duplicative of his more detailed December 8, 2003 narrative report that is part of the record. Consequently, the above-mentioned evidence is insufficient to warrant further merit review.⁸

Dr. L. Schofferman's February 27, 2007 report is also insufficient to justify reopening the record for merit review. He diagnosed chronic pain syndrome and L5-S1 central disc protrusion with chronic discogenic pain. These conditions, however, have not been accepted by the Office. The only condition accepted by the Office was lumbosacral sprain. Moreover, Dr. L. Schofferman did not address the issue of whether appellant's current back condition was causally related to either the 1984 or 1988 employment injuries. Therefore, his February 27, 2007 report is not relevant to the issue of whether appellant has any employment-related residuals. Accordingly, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).⁹

Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the May 1, 2007 request for reconsideration.

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

⁸ Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim. *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

⁹ 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

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

Issued: March 12, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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