

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

K.K., Appellant

and

**DEPARTMENT OF THE INTERIOR,
HARPER'S FERRY JOB CORPS CENTER,
Harper's Ferry, WV, Employer**

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**Docket No. 07-2225
Issued: September 8, 2008**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument July 1, 2008

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 4, 2007 appellant filed a timely appeal of the June 6, 2007 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. In a May 14, 2007 decision, the Board set aside the Office's November 1, 2006 decision which denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence

of error.¹ The Board found that appellant's September 16, 2005 request for reconsideration of the Office's September 24, 2004 decision, which denied modification of its finding that she did not sustain a recurrence of disability or carpal tunnel syndrome causally related to her April 4, 1997 employment injury, was timely filed. The Board remanded the case to the Office for application of the proper standard for timely reconsideration requests pursuant to 20 C.F.R. § 10.606(b)(2). The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.² The facts and the history relevant to the present issue are hereafter set forth.

On remand, the Office reviewed the arguments set forth in appellant's timely September 16, 2005 reconsideration request and accompanying evidence. Appellant contended that the Office confused her claim for depression which was filed on December 2, 1997 and assigned file number 03-0232374 with the instant claim assigned file number 03-0227352.³ She stated that she was claiming compensation for total disability causally related to her April 4, 1997 employment-related neck sprain and multiple contusions only for the period April 8 through 14, 1997 when she was taken off work by Paula P. Russo, a physician's assistant, and Dr. Sandra Fowler, a Board-certified family practitioner, and February 26 through May 4, 1998 when Dr. Mehrullah Khan, an attending Board-certified neurologist, determined that she sustained bilateral carpal tunnel syndrome and chronic denervation at C5-6. Appellant contended that she was entitled to compensation for a percentage of permanent disability that was caused by her April 4, 1997 employment injuries. She also stated that she sustained bilateral carpal tunnel syndrome due to her accepted employment injuries.

Appellant submitted duplicate copies of medical records. Treatment records of Dr. Fowler from April 8, 1997 through January 29, 1998 and Dr. Khan from December 13, 1997 through April 23, 1998 which addressed appellant's concussion, cervical condition and bilateral carpal tunnel syndrome. A February 22, 1999 report of physical therapists, Susan Marschke and Katrina Darnell, also addressed appellant's cervical condition and bilateral carpal tunnel syndrome.

In a report dated April 27, 2004 and treatment notes covering intermittent dates from April 1, 2004 through June 19, 2006, Dr. Kahn stated that appellant had radiculopathy at C5-6, carpal tunnel syndrome and a rotator cuff tear. He also addressed her medical treatment.

¹ Docket No. 07-319 (issued May 14, 2007).

² On April 4, 1997 appellant, then a 48-year-old social services assistant, filed a traumatic injury claim assigned number 03-0227352 alleging that on that date she hurt her back and bruised her head, chest, arm, foot and leg in an automobile accident. On June 25, 1997 the Office accepted the claim for neck sprain and multiple contusions. On March 7, 1998 while totally disabled for work due to her accepted employment-related depression, appellant filed a claim for recurrence of disability alleging that she continued to have residuals and sustained carpal tunnel syndrome causally related to her April 4, 1997 employment injuries. By decision dated May 20, 1998, the Office denied the claim and, following requests for reconsideration, denied modification of its decision on March 15, 1999, April 19, 2000, June 9, 2001, February 26, 2002, May 2 and October 1, 2003.

³ Appellant stated that on July 31, 2000 the Office accepted her claim assigned file number 03-0232374 for depression.

Progress notes covering intermittent dates from October 13, 2005 to April 4, 2006 of Maureen C. Chamberlin, a licensed clinical social worker, addressed stressors in appellant's life.

By decision dated June 6, 2007, the Office denied appellant's request for reconsideration on the grounds that the arguments and evidence submitted were duplicative in nature and, thus, insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁴ the Office's regulation provide that 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.⁵ 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.⁶ 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 of the merits.

ANALYSIS

In a September 16, 2005 letter, appellant disagreed with the Office's September 24, 2004 decision, denying modification of its finding that she did not sustain a recurrence of disability or carpal tunnel syndrome causally related to her accepted April 4, 1997 employment injuries. The relevant issue in the case, whether she sustained a recurrence of disability causally related to her April 4, 1997 employment injuries, is medical in nature.

In her request for reconsideration, appellant argued that the Office confused the instant claim with her claim for depression. She was claiming compensation for total disability causally related to her April 4, 1997 employment-related injuries only for the period April 8 through 14, 1997 when she was taken off work by Ms. Russo and Dr. Fowler, and February 26 through May 4, 1998 when Dr. Khan determined that she sustained bilateral carpal tunnel syndrome and chronic denervation at C5-6. Appellant contended that she sustained bilateral carpal tunnel syndrome causally related to her April 4, 1997 employment injuries and that she was entitled to a schedule award for permanent impairment. 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.⁷ Appellant's contentions were previously made and addressed by the Office in its prior decisions and, thus, do not constitute relevant and pertinent new evidence not previously considered by the

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

Office. The Board finds that this evidence does not require reopening appellant's claim for further review on the merits.

Similarly, the duplicative medical records of Dr. Fowler, Dr. Khan, Ms. Marschke and Ms. Darnell do not require reopening appellant's claim for further merit review. This evidence was previously of record and reviewed by the Office in its prior decisions.

Ms. Chamberlin's treatment notes covering intermittent dates from October 13, 2005 to April 4, 2006 addressed the stressors in appellant's life. Dr. Khan's treatment notes covering intermittent dates from April 1, 2004 through June 19, 2006 and report dated April 27, 2004 addressed appellant's cervical radiculopathy, carpal tunnel syndrome and rotator cuff tear. Although this evidence is new, it is not relevant to the issue of whether appellant's April 4, 1997 employment injuries caused her continuing residuals and disability, and a consequential injury. The Board notes that, as a social worker, Ms. Chamberlin is not a physician as defined under the Act.⁸ Moreover, Dr. Khan did not address whether appellant's ongoing emotional and physical conditions were causally related to her accepted employment injuries.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁹

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

⁸ See 5 U.S.C. § 8101(2).

⁹ See 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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