

degenerative disc disease at L5-S1 and lumbar radiculopathy. Appellant was placed on the periodic compensation rolls.

Appellant came under the treatment of Dr. Rida N. Azer, a Board-certified orthopedist, from March 19, 1980 to July 16, 1985, for internal derangement of the right knee, partial tear of the ligament of the left ankle and lumbosacral strain. A magnetic resonance imaging (MRI) scan of the lumbar spine dated April 22, 2002, revealed bilateral facet disease at L3-4, L4-5 and L5-S1. On July 9, 2002 appellant underwent a lumbar discography at L3-S1 which revealed no compelling clinical data to suggest a discogenic basis for appellant's long-standing back pain.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners. The physicians opined that appellant's accepted internal derangement of the right knee, right knee synovitis, aggravation of right knee arthritis, partial tear of the ligament of the left ankle, lumbosacral strain, aggravation of lumbar degenerative disc disease at L5-S1 and lumbar radiculopathy had resolved and she had no existing residuals.

On December 14, 2005 the Office issued a notice of proposed termination of compensation benefits on the grounds that the impartial medical examiner established that appellant had no residuals of the accepted work-related employment conditions and could perform her date-of-injury job.

Appellant submitted a January 3, 2006 report from Dr. Hector M. Pedraza, a Board-certified orthopedist, who treated appellant for right knee pain. Dr. Pedraza noted a standing x-ray revealed degenerative changes worse on the right side.

By decision dated January 26, 2006, the Office terminated appellant's compensation for wage loss effective February 19, 2006 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment conditions. The decision did not affect medical benefits.

On January 25, 2007 appellant requested reconsideration and asserted that she remained totally disabled from work. She submitted an October 20, 2006 report from Dr. Mark Koruda, a Board-certified orthopedist, who saw her for preoperative workup in anticipation for repair of a rectovaginal fistula. An x-ray of the lumbar spine dated October 20, 2006 revealed degenerative facet osteoarthritis at L5-S1 and fusion of the bilateral sacroiliac joints. Appellant submitted a December 14, 2006 report from Dr. Theodore M. Pitts, a Board-certified orthopedist, who diagnosed severe tricompartment osteoarthritis of the right knee with limited motion and significant pain, severe osteoarthritis of the right hip and chronic low back pain. Dr. Pitts opined that appellant reached maximum medical improvement with respect to her work-related right knee injury and recommended a total knee replacement. He opined that appellant had permanent impairment of the right leg. In a February 27, 2007 report, Dr. Pitts noted appellant's complaints of right knee pain, chronic low back pain and right hip pain. He diagnosed right knee post-traumatic severe osteoarthritis, chronic low back pain and severe right hip arthritis.

By decision dated May 1, 2007, the Office denied modification of the January 2, 2006 decision terminating appellant's wage-loss compensation.

Appellant submitted July 10 and August 16, 2007 reports from Dr. Pitts who treated her for persistent leg, right knee, right hip and left ankle pain. Dr. Pitts noted findings on examination of pain with rotation of the right hip, tenderness over the lumbosacral junction with bone-on-bone crepitus over the right knee. He diagnosed severe osteoarthritis of the right knee, right hip and chronic low back pain. In his July 10, 2007 report, Dr. Pitts opined that appellant was probably permanently disabled and would never return to gainful employment. An electromyogram (EMG) dated October 23, 2007 revealed no abnormalities.

On April 28, 2008 appellant requested reconsideration of the May 1, 2007 decision and asserted that she sustained injuries which developed from the original work incident and were not accepted by the Office. She requested that her benefits be reinstated and the Office take into consideration the injuries which had not been accepted but were documented in medical reports since 1980. Appellant submitted medical reports from Dr. Azer from 1980 to 1985, previously of record.

By decision dated May 14, 2008, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.¹

LEGAL PRECEDENT

Under section 8128(a) of the Act,² the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,³ which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain 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 Office].”

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

¹ On January 9, 2008 the Office issued appellant a schedule award for 37 percent permanent impairment of the right leg. Appellant did not appeal this decision.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

ANALYSIS

Appellant's April 28, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration asserted that she sustained injuries as a result of the work incident which were not accepted by the Office including a left knee injury. She requested that her benefits be reinstated and that the Office consider conditions that had not been accepted by the Office but developed from the original injury and were documented in medical reports since 1980. However, appellant's letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. She did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted reports from Dr. Azer dated March 19, 1980 to September 23, 1985; however these records are duplicates of prior reports already contained in the record and were previously considered by the Office.⁵

Appellant also submitted July 10 and August 16, 2007 reports from Dr. Pitts who treated appellant for persistent leg pain with pain over her right knee, right hip and left ankle. Dr. Pitts diagnosed severe osteoarthritis of the right knee, right hip and chronic low back pain. He opined in his July 10, 2007 report that appellant was probably permanently disabled and would not return to gainful employment. These reports, while new, are not relevant because they do not specifically address the underlying issue of whether appellant had any ongoing disability after February 19, 2006 causally related to her accepted work injury. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her January 25, 2007 request for reconsideration.

On appeal, appellant through her attorney asserts that her benefits should be reinstated as the Office did not meet its burden of proof to terminate benefits. Counsel also asserts that additional medical conditions, not accepted by the Office, developed from the original injury. However, the Board does not have jurisdiction over the Office's decision that terminated appellant's wage-loss benefits.⁶ Furthermore, the matter of whether appellant has additional

⁵ 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; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ See 20 C.F.R. § 501.3(d).

conditions causally related to the March 6, 1980 work injury is not presently before the Board as the Office has not addressed this in a final decision over which the Board has jurisdiction.⁷

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ *Id.* See *id.* at § 501.2(c).