

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, MOTOR VEHICLE
SERVICE, Cleveland, OH, Employer**

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**Docket No. 09-150
Issued: July 10, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2008 appellant filed a timely appeal from an October 2, 2008 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision 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(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

This is the second appeal before the Board. On March 8, 2007 appellant, a 55-year-old custodian, filed a traumatic injury claim, alleging that he injured his lower back when he slipped on a wet floor on February 6, 2007. By decision dated April 25, 2007, the Office denied his claim, finding that he failed to submit medical evidence establishing that he sustained a condition or disability resulting from the February 6, 2007 work incident.

Appellant subsequently requested an oral hearing and submitted February 10, March 13 and May 8, 2007 form reports from Dr. Brian Hassinger, a chiropractor, an October 12, 2007 report from Dr. Molly Friedman-Verdun, a specialist in family practice, and an October 19, 2007 report from Dr. Timothy Morley, an osteopath. By decision dated November 15, 2007, an Office hearing representative affirmed the April 25, 2007 Office decision. In a July 9, 2008 decision,¹ the Board affirmed the Office's decisions. The complete facts of this case are set forth in the Board's July 9, 2008 decision and are herein incorporated by reference.

By letter dated October 3, 2008, appellant's attorney requested reconsideration. Appellant submitted a July 17, 2008 Form CA-17 report from Dr. Hassinger and a September 2, 2008 report from Dr. Friedman-Verdun, who stated that she wanted to clarify her previous report regarding the injuries appellant sustained at work on February 6, 2007. Dr. Friedman-Verdun noted that appellant presented initially with a history that he slipped and fell on a wet floor at work and experienced excruciating low back and lower left side pain, with subsequent leg pain and weakness. A magnetic resonance imaging (MRI) scan was ordered which demonstrated L3-4, L4-5 disc herniations and nerve entrapment. The MRI scan also demonstrated disc degeneration. Dr. Friedman-Verdun further noted that appellant continued to experience low back pain with radiculopathy into his left leg despite compliance with anti-inflammatory medications, muscle relaxers, home physical therapy, steroids and pain relievers. On examination at each visit, he demonstrated paraspinal bogginess and pain to palpation in the lower lumbar region, as well as a positive straight leg raise. Appellant was then referred to Dr. Morley, for a series of three epidural treatments. Despite his continued compliance, he continues to experience pain and decrease range of motion, and radiculopathy into his extremity. Dr. Friedman-Verdun concluded:

“In my professional medical opinion, the fall [appellant] suffered at work caused the two disc herniations, and subsequent impairment. In addition, the consultant's reports, MRI [scan] and [appellant's] objective complaints all corroborate this causal relationship.”

By decision dated October 2, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.²

¹ Docket No. 08-494 (issued July 9, 2008).

² The Office rejected the contention by appellant's attorney that the Board's characterization of Dr. Morley, an osteopath, as a chiropractor in its July 9, 2008 decision and its finding that his October 2007 report did not constitute medical evidence under section 8101(2) was reversible error. It noted that, prior to the Board's July 9, 2008 decision, the Office hearing representative had properly considered Dr. Morley's report as a valid medical report in his November 15, 2007 decision. The Office stated that the hearing representative had reviewed the report and determined that it did not contain medical evidence sufficient to establish that the February 6, 2007 work injury resulted in a compensable condition or disability because it did not reference a work injury or event occurring on that date.

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 constituting relevant and pertinent evidence not previously considered by the Office.³ 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.⁴

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not constituted relevant and pertinent evidence not previously considered by the Office. The evidence he submitted is not pertinent to the issue on appeal, which is whether appellant has established causal relationship between any injury or disability and the accepted work incident. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ The July 17, 2008 form report from Dr. Hassinger contains no rationalized opinion on causal relationship to the accepted injury. Dr. Friedman's September 2, 2008 report is cumulative and repetitive of reports which were previously considered by the Office. Appellant has not submitted any new medical evidence which addresses the relevant issue of whether his claimed lower back sprain was causally related to factors of his federal employment. His reconsideration request failed to show that 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. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

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

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 10, 2009
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