United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 08-2517**
	)	**Issued: March 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Rochester, NY, Employer	)	

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' August 21, 2008 decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. By decision dated July 18, 2007, the Board affirmed the Office decision dated December 15, 2006 denying her claim for recurrence of disability. The Board found that the evidence of record was insufficient to demonstrate how appellant's present condition was causally related to her previous 1981 employment injury,

inflammatory left knee effusion and fracture distal left condyle. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

Following the Board's decision, appellant submitted additional medical evidence and, by letter dated October 12, 2007, requested reconsideration. In support of her request, she submitted medical reports from Strong Memorial Hospital detailing office visits occurring between July 13, 1982 and April 7, 2005.

Additionally, appellant submitted physical therapy reports. Included with these reports was a medical note signed by Dr. Richard A. Lewis, a Board-certified orthopedic surgeon, concerning appellant's physical therapy. Dr. Lewis prescribed water therapy and an exercise program.

Appellant also submitted a June 16, 2008 attending physician's report (CA-20) signed by Dr. Allen D. Boyd, a Board-certified orthopedic surgeon, in which he checked the box indicating that appellant's condition was caused or aggravated by her federal employment. Dr. Boyd reported treating appellant with total left and right knee joint replacements. He did not proffer a diagnosis or findings from examination. Dr. Boyd advised appellant on March 3, 2008 that she was able to resume regular work duties on March 17, 2008 and that the only permanent effects of her injury would be limited range of motion.

Additionally, appellant submitted an August 14, 2006 medical treatment report, signed by Dr. Boyd. She also submitted a June 13, 2008 medical note of Dr. Donna Ferrero, Board-certified physiatrist, who diagnosed appellant with chronic neck pain that arose from a work-related injury on March 16, 1997.

By decision dated August 21, 2008, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review of the case. It found the reports from Strong Memorial Hospital were previously received and irrelevant because they concerned visits prior to the date of her claimed recurrence. The Office found the physical therapy notes of limited probative value because physical therapists are not physicians for purposes of the Federal Employees' Compensation Act and therefore their reports are not considered medical evidence. It found the Form CA-20 of diminished probative value because it did not include a detailed history of appellant's injury, findings on examination, or a rationalized medical opinion on the relationship between her disability and her accepted work-related injury. Furthermore, the Office found the report of Dr. Boyd to be of diminished probative value because it did not address the causal relationship between the alleged diagnosed condition and factors of employment. Finally, it concluded that Dr. Ferrero's medical report was irrelevant as it related to a neck injury not the accepted injury, inflammatory left knee effusion and fracture distal left condyle.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument

not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[1]

ANALYSIS

The Office denied merit review on the grounds that appellant did not raise a new legal argument or submit new and relevant medical evidence. In requesting reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Thus, she 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).[2]

Concerning the third of the above-noted requirements under section 10.606(b)(2), appellant did not submit any pertinent new and relevant evidence not previously considered by the Office in support of her request for reconsideration. The record reflects that the hospital reports from Strong Memorial Hospital were previously submitted and, therefore, considered in the Office's prior decision. Material that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[3] Such repetitious and duplicative evidence is *prima facie* insufficient to constitute a basis for reopening the claim for further merit review.[4]

Furthermore, the physical therapy notes do not constitute pertinent relevant evidence because physical therapists are not considered physicians for purposes of the Act.[5] Thus their opinions and reports are not considered medical evidence for purposes of the Act and are insufficient evidence to constitute a basis for reopening the claim for further merit review.

Finally, Drs. Boyd, Ferrero and Lewis's medical reports and notes are equally insufficient medical evidence. The underlying issue in this case is causal relationship. To constitute new and relevant evidence, the medical report submitted must provide medical opinion regarding causal relationship with some probative medical value. On appellant's Form CA-20, Dr. Boyd checked a box "yes" to indicate that appellant's left knee injury was caused or aggravated by her federal employment. The Board has held that when a physician's opinion on causal relationship

[1] 20 C.F.R. § 10.606(b)(2)(i-iii).

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Katherine A. Williamson*, 33 ECAB 1696 (1982).

[4] *Buck Green*, 37 ECAB 374 (1986).

[5] *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992) (holding that lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act). *See also Jane A. White*, 34 ECAB 515 (1983) (holding a physical therapist is not a physician within the meaning of the Act and therefore not competent to give a medical opinion).

consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value.[6]

Dr. Ferrero's medical report diagnosed appellant with chronic neck pain. While this diagnosis is new, it does not address the underlying issue in this case, which is causal relationship. Similarly, Dr. Lewis' medical note merely prescribed a course of physical therapy and, therefore, contributes nothing new, relevant or pertinent concerning a rationalized causal connection between any diagnosed condition and the accepted injury of 1981.

Thus, the Office properly declined to reopen the case on the merits as appellant did not meet the criteria for a merit review.[7]

CONCLUSION

The Board finds that the Office properly denied appellant's October 12, 2007 request for merit review.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[6] *See Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

[7] 20 C.F.R. § 10.606(b)(2)(i-iii).