

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

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**D.K., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Campbell, KY, Employer**

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**Docket No. 09-747**

**Issued: October 16, 2009**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 4, 2009 appellant filed a timely appeal from an April 11, 2008 decision of the Office of Workers' Compensation Programs which denied merit review. Because more than one year has elapsed between the most recent merit decision dated February 1, 2008 and the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On April 23, 2001 appellant, then a 51-year-old painter, filed a traumatic injury claim alleging that while lifting signs at work he experienced pain in the left groin area. He stopped work on April 23, 2001 and returned on April 24, 2001. The Office accepted appellant's claim for perineal left-sided hernia and authorized surgery which was performed on May 19, 2001.

From November 19 to 29, 2007, appellant was treated by Dr. Derrick Galapon, a Board-certified general surgeon, for a perineal abscess. His history was significant for a hernia repair in May 2001 with subsequent perineal area swelling and drainage. On November 29, 2007 Dr. Galapon noted that a computerized tomography (CT) scan of the abdomen and pelvis dated November 27, 2007 revealed a left renal cyst and mild diverticulosis. He diagnosed perineal abscess and possible stitch abscess, etiology unknown and recommended surgical intervention.

On December 28, 2007 appellant filed a recurrence of disability claim. In January 2002, he developed a large lump which impeded his ability to walk and which was causally related to his accepted August 23, 2001 hernia. Appellant was working limited duty at the time of the claimed recurrence and did not stop work.

In a decision dated February 1, 2008, the Office denied appellant's claim for a recurrence of his accepted hernia condition.

On March 19, 2008 appellant requested reconsideration. In an undated letter, he addressed his work injury and subsequent treatment including surgery. After surgery, appellant reported developing a large lump at the surgical site approximately four times per year which would drain. He noted never having problems prior to the surgery and advised that his quality of life had diminished and he struggled to sit, walk or work. On February 18, 2008 Dr. Galapon noted that appellant underwent surgery in 2001 and presented in November 2007 with a possible perineal abscess. After a CT scan of the abdomen revealed no abnormalities, he recommended exploratory surgery to determine if appellant's current condition was aggravated by previous surgeries. On February 21, 2008 appellant was treated by Dr. Daniel R. Miller, a family practitioner, for a possible chronic abscess or fistulous tract. Appellant reported having a work-related injury which caused a left inguinal hernia for which he underwent two herniorrhaphies and subsequently experienced intermittent swelling and drainage from the area of the surgery. Dr. Miller noted treating appellant on November 16, 2007 for intermittent swelling and drainage from the surgical area which was consistent with a healed abscess.

By decision dated April 11, 2008, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> 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,<sup>2</sup> which provides that a claimant may obtain review of the merits of his or her written

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

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.<sup>3</sup>

### ANALYSIS

Appellant’s March 19, 2008 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.

Appellant’s request for reconsideration asserted that after undergoing surgery for his work-related hernia he intermittently developed large lumps in the hernia area which would drain. He asserted that his quality of life was diminished due to the hernia surgeries and he struggled to sit, walk or work. 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. He 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 his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a February 18, 2008 report from Dr. Galapon who noted that appellant underwent surgery in 2001 to repair a perineal hernia and presented in November 2007 with a possible perineal abscess. Dr. Galapon recommended exploratory surgery to determine if appellant’s current condition was aggravated by previous surgeries. However this report is similar to his prior reports of November 19 and 29, 2008 already of record and previously considered by the Office and found deficient.<sup>4</sup>

Appellant also submitted a report from Dr. Miller dated February 21, 2008 who treated appellant for intermittent swelling and drainage from the surgical area which was consistent with

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<sup>3</sup> 20 C.F.R. § 10.608(b).

<sup>4</sup> 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).

a healed abscess. He reported having a work-related injury which caused a left inguinal hernia for which he underwent two herniorrhaphies and subsequently experienced intermittent swelling and drainage. However, Dr. Miller's report, while new, is not relevant because he did not provide his own opinion regarding whether appellant sustained a recurrence in January 2002 causally related to the accepted work injury of April 23, 2001.

Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office, nor did he submit relevant and pertinent evidence not previously considered by the Office."<sup>5</sup>

The Board finds that the Office properly determined that 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) and properly denied his request for reconsideration.

On appeal, appellant asserted that he never had health problems prior to the April 23, 2001 work injury and requested that the Board review the merits of his claim. However, the Office considered his contentions, as noted, in denying his reconsideration request. Furthermore, as noted, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 because more than one year has elapsed since the most recent merit decision dated February 1, 2008 and the filing of this appeal on February 4, 2009.

### **CONCLUSION**

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

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<sup>5</sup> 20 C.F.R. § 10.606(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 11, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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