

commencing September 1, 1989.¹ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

In 1992, appellant filed a claim for an emotional condition, which the Office accepted for major depression.² In the course of developing the claim, an Office referral physician, advised that appellant was able to return to full-time work in a position outside the government.

On March 17, 2003 appellant was referred for vocational rehabilitation. In a vocational rehabilitation March 31, 2004 closure report, the counselor advised that the rehabilitation plan was instituted with the goal of obtaining employment as an accounting clerk. The counselor noted that several good contacts were made on behalf of appellant with employers; however, she was unsuccessful in obtaining employment.

On June 14, 2004 the Office issued a proposed reduction of compensation finding that appellant was partially disabled and had the capacity to earn wages as an accounting clerk, at the rate of \$560.00 per week. It referenced the rehabilitation counselor's report which determined that the constructed position of accounting clerk reasonably represented her wage-earning capacity.

Appellant submitted an April 23, 2004 report from, Dr. Jennifer L. Fyler, a Board-certified psychiatrist. She diagnosed major depression and back injury. Reports from Renee Lang, a naturopathic practitioner, dated July 1 and 13, 2004 diagnosed herniated disc at L4-L5, work-related clinical depression, anxiety with panic and post-traumatic stress disorder. She found that appellant was unable to work due to panic, anxiety and depression triggered by mild stressors.

In a July 28, 2004 decision, the Office reduced appellant's wage-loss benefits to reflect her wage-earning capacity as an accounting clerk effective August 8, 2004.

On August 31, 2004 appellant requested reconsideration. In an August 24, 2004 report, Ms. Lang stated that she remained totally disabled from work.

In a November 24, 2004 decision, the Office denied appellant's reconsideration request on the grounds that it did not raise any substantive legal questions or include new and relevant evidence. The report of Ms. Lang was insufficient to warrant further review of the merits.

On September 29, 2005 appellant requested the Office "set up a new claims appeal" so that she could submit additional evidence. In reports dated August 24, 2004 to August 3, 2005, Ms. Lang advised that appellant was totally disabled from all work due to major depression. On August 10, 2006 Dr. Sanford Bloomberg, a Board-certified psychiatrist, treated appellant for insomnia, depression and anxiety. He diagnosed major depression and generalized anxiety

¹ Docket No. 90-1864 (issued February 25, 1991). Appellant filed a claim for a work-related back injury, which occurred on March 11, 1989 and was accepted for lumbosacral strain, File No. xxxxxx945. Appellant filed a claim for a back injury which occurred on February 8, 1992 which was accepted for low back strain, File No. xxxxxx390. The claims were consolidated with the current claim.

² The record indicates that appellant received wage-loss compensation for total disability.

disorder and opined that these conditions were related to her work experience. Dr. Bloomberg opined that appellant remained totally disabled from work.

In a decision dated September 6, 2006, the Office denied appellant's reconsideration request finding that it was not timely filed and did not present clear evidence of error.

Appellant appealed to the Board. In a May 15, 2007 order remanding case, the Board set aside the September 6, 2006 Office decision and remanded the case for adjudication on whether modification of appellant's wage-earning capacity determination was warranted.³

On August 30, 2007 appellant requested modification of the July 28, 2004 loss of wage-earning capacity determination. She submitted reports from, Dr. Bloomberg dated July 25 and November 1, 2007. He advised that appellant had some improvement in her depression, anxiety and insomnia; however, her pain syndrome prevented remission of her depression and anxiety. Dr. Bloomberg opined that appellant's conditions were directly related to her work and that she was incapacitated from all work. In a September 16, 2007 report, Dr. Sara Rourke, a Board-certified psychiatrist, diagnosed chronic low back pain and severe depression. In a November 2, 2007 report, Dr. Marguerite Gump, a family practitioner, advised that appellant was unable to work due to depression, which was secondary to her work-related back pain that began in 1988.

In a decision dated January 10, 2008, the Office denied modification of the July 28, 2004 wage-earning capacity decision.

On January 24, 2008 appellant requested an oral hearing, which was held on June 11, 2008. In support of her request, she asserted that the Office failed to consider her back injury before reducing her compensation.

On July 29, 2008 the Office hearing representative affirmed the January 10, 2008 decision.

On May 3, 2009 appellant requested reconsideration of the July 29, 2008 decision. She contented that all of her medical conditions were not properly considered, specifically noting the work-related back injury of February 8, 1992 for which she remained totally disabled. In a March 10, 2009 prescription note, Dr. Gump noted that appellant had been unable to work since 2004 due to a back injury sustained at work on March 11, 1989.

In a June 11, 2009 decision, the Office denied appellant's reconsideration request on the grounds that her request 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,⁴ the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in

³ Docket No. 06-2170 (issued May 15, 2007).

⁴ 5 U.S.C. § 8128(a).

accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁵ 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.⁶

ANALYSIS

Appellant’s reconsideration requests neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant’s request for reconsideration asserted that all of her medical conditions were not properly considered, specifically noting the work-related back injury that she sustained on February 8, 1992 for which she remained totally disabled. However, she did not establish how the Office erroneously applied or interpreted a point of law. Appellant did not 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. Appellant’s contention that the Office did not consider her back condition was previously considered.⁷ Consequently, 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).

With respect to the third requirement, appellant submitted a March 10, 2009 prescription note from Dr. Gump. He noted that she had been unable to work since 2004 due to a back injury sustained at work on March 11, 1989. This evidence, while new, is duplicative of Dr. Gump’s November 2, 2007 report that was previously of record and considered by the Office.⁸

⁵ 20 C.F.R. § 10.606(b).

⁶ *Id.* at § 10.608(b).

⁷ *See E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009) (evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case).

⁸ Evidence that repeats or duplicates that already of record has no evidentiary value and does not constitute a basis for reopening a claim. *See Patricia G. Aiken*, 57 ECAB 441 (2006).

Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Office properly denied a merit review as appellant did not show that the Office erroneously applied or interpreted a point of law; advance a point of law or fact not previously considered or submit relevant and pertinent evidence not previously considered.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2010
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