

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

S.R., Appellant)	
)	
and)	Docket No. 09-1319
)	Issued: February 17, 2010
U.S. POSTAL SERVICE, RIVER OAKS)	
STATION, Houston, TX, Employer)	
)	

Appearances:
C.B. Weiser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 22, 2009 appellant, through her attorney, filed a timely appeal of an April 8, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration of the merits of her claim. Because more one year has elapsed between the most recent merit decision dated March 28, 2008 and the filing of the appeal, the Board lacks jurisdiction to review the merits of her 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 of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 29, 2005 appellant, then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2005 she experienced pain in her shoulder, leg and

lower back as a result of stepping on a plug that was lying on the floor.¹ She twisted her foot which threw her off balance and caused her to hit a wall with her left shoulder. Appellant fell to the floor onto her buttocks. By letter dated January 26, 2006, the Office accepted her claim for contusion of the left shoulder.

On June 27, 2006 appellant filed a claim for compensation for disability commencing March 11, 2006. She submitted medical evidence which addressed her left shoulder and neck conditions and disability for work. A July 6, 2006 magnetic resonance imaging (MRI) scan report of the cervical spine from Dr. The Q. Truong, a Board-certified radiologist, found no evidence of demyelination lesion of the cervical spinal cord. He found mild multilevel degenerative disc disease and spondylosis that was slightly progressed in the interval and most significant at C5-6 which resulted in moderate left lateral recess and neural foraminal narrowing that may cause mild to moderate encroachment on the left C6 exiting nerve roots.

By decision dated May 23, 2007, the Office denied appellant's compensation claim for the period commencing March 11, 2006. It found the evidence insufficient to support total disability during the claimed period due to her accepted December 23, 2005 employment-related injury. On June 5, 2007 appellant requested an oral hearing before an Office hearing representative.

Appellant submitted medical evidence regarding her left shoulder and cervical conditions and disability for work. In a June 27, 2007 report, Dr. Rajesh K. Bindal, an attending Board-certified neurosurgeon, opined that appellant suffered from a herniated cervical disc with stenosis and radiculopathy due to her accepted December 23, 2005 employment injury.

A September 14, 2005 MRI scan report from Dr. Phylliss M. Chappell, a Board-certified radiologist, advised that the cervical spinal cord was normal and there was no definite evidence of demyelinating lesions. Dr. Chappell reported spondylosis, uncinata and degenerative facet hypertrophy and degenerative disc desiccation at C5-6. There was a disc bulge at C6-7 and disc protrusion at C5-6 with moderate effacement of anterior cervical subarachnoid space and possible effacement of the proximal left C6 nerve root sleeve at C5-6.

By decision dated December 17, 2007, an Office hearing representative affirmed the May 23, 2007 decision, finding that appellant did not submit any rationalized medical evidence supporting employment-related disability during the claimed period. In a March 13, 2008 letter, she requested reconsideration.

By decision dated March 28, 2008, the Office denied modification of the December 17, 2007 decision. It again found that appellant failed to submit rationalized medical evidence establishing that her disability during the claimed period was causally related to her accepted December 23, 2005 employment injury.

Medical reports of Dr. David V. Dent, an attending Board-certified physiatrist, dated January 21, 2008 to March 16, 2009 advised that appellant sustained impingement syndrome,

¹ Prior to the instant claim, appellant filed a CA-1 form, OWCP File No. xxxxxx427. The Office accepted her claim for cervical strain and radiculopathy. Appellant underwent cervical surgery which was performed on June 7, 1991. Subsequently, the Office determined that her actual part-time earnings fairly and reasonably represented her wage-earning capacity.

acromioclavicular joint pain, rotator cuff tendinitis, adhesive capsulitis, joint disorder, chronic pain syndrome and compression arthralgia of the left shoulder. Appellant also sustained herniated disc complex, radiculopathy, neuritis, a sprain and bulging disc of the cervical spine. Dr. Dent stated that she had status post cervical spine surgery. In reports dated September 22, 2008 to March 16, 2009, he opined that appellant's left shoulder and cervical conditions were caused by her December 23, 2005 employment injury. In reports dated October 20, 2008 and March 16, 2009, Dr. Dent advised that appellant's herniated intervertebral cervical disc, chronic pain, cervicgia, neck strain and bulging cervical disc were a result of her accepted June 6, 1990 employment injuries.

Reports dated July 7, 2006 to February 9, 2009 of Dr. John D. Kirkwood, an attending Board-certified family practitioner, advised that appellant suffered from a herniated disc and radiculopathy of the cervical spine, cervicgia, thyroid disease, headaches, multiple sclerosis, acid reflux and left shoulder pain with impingement syndrome. He opined that she was totally disabled for work from August 14, 2007 to January 12, 2009.

In reports dated March 26 and October 29, 2008, Dr. Bindal reiterated that appellant sustained cervical radiculopathy.

In a June 10, 2008 report, Dr. Truong advised that appellant underwent a successful left shoulder arthrogram.

An August 8, 2008 MRI scan report of Dr. J.S. Lee, a Board-certified radiologist, revealed a postoperative change at C5-6 with significant uncovertebral facet arthropathies on the left with posterior osteophyte that caused mild left paracentral canal stenosis and stenosis of the lateral-sided neural foramen at C5-6. A postoperative change at C6-7 was demonstrated with left paracentral posterior enhancement of the fissured annulus with small focal residual or recurrent disc protrusion and/or combination of the focal small enhanced epidural fibrotic scar at C6-7.

By letter dated March 27, 2009, appellant, through counsel, requested reconsideration of the March 28, 2008 decision. She submitted duplicate copies of Dr. Truong's July 6, 2006 and Dr. Chappell's September 14, 2005 MRI scan reports, and Dr. Bindal's June 27, 2007 and March 26 and October 29, 2008 reports.

In an April 8, 2009 decision, the Office denied appellant's request for reconsideration. It found that the evidence submitted was cumulative in nature and not relevant and, thus, insufficient to warrant further merit review of appellant's claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

Appellant's March 27, 2009 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. Consequently, the Board finds that 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).

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. Dr. Dent's reports dated January 21, 2008 to March 16, 2009 are insufficient to warrant reopening her claim for further merit review. He did not address the relevant issue of whether appellant was totally disabled beginning March 11, 2006 due to her accepted December 23, 2005 employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.⁵

Similarly, Dr. Kirkwood's reports dated July 7, 2006 to February 9, 2009 are insufficient to warrant reopening of appellant's claim for further merit review. While he opined that appellant was totally disabled for work from August 14, 2007 to January 12, 2009, he did not address whether her disability was causally related to the accepted December 23, 2005 employment injury. In addition, the Board notes that the Office has not accepted the instant claim for herniated disc and radiculopathy of the cervical spine, cervicgia, thyroid disease, headaches, multiple sclerosis, acid reflux and left shoulder pain with impingement syndrome. As such, the Board finds that these reports do not warrant reopening the case on the merits.

Dr. Truong's June 10, 2008 report indicating that appellant underwent a successful left shoulder arthrogram and Dr. Lee's August 8, 2008 MRI scan report which described her postoperative changes at C5-6 and C6-7 are insufficient to warrant reopening appellant's claim for further merit review. Neither physician addressed whether appellant was totally disabled beginning March 11, 2006 due to her December 23, 2005 employment-related injury.⁶

Dr. Truong's July 6, 2006 and Dr. Chappell's September 14, 2005 MRI scan reports, and Dr. Bindal's June 27, 2007 and March 26 and October 29, 2008 reports were previously considered by the Office and are duplicative in nature. The Board finds that this evidence does not constitute a basis for reopening appellant's claim for further merit review.⁷

⁴ *Id.* at § 10.607(a).

⁵ *D'Wayne Avila*, 57 ECAB 642 (2006).

⁶ *Id.*

⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. See *L.H.*, 59 ECAB ____ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

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 March 27, 2009 request for reconsideration.⁸

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2010
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

⁸ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits).