

FACTUAL HISTORY

On September 10, 1982 appellant, then a 55-year-old stevedore, filed a traumatic injury claim alleging that he sustained a back injury in the performance of duty. The Office accepted his claim for right sciatica. Appellant stopped working in 1984 and received appropriate wage-loss compensation and medical benefits.

In a decision dated August 24, 2006, the Office terminated appellant's compensation and medical benefits effective September 3, 2006 on the grounds that his accepted sciatica condition had resolved. Its decision was based on the July 21, 2006 referee report of Dr. John W. Batcheller, a Board-certified orthopedic surgeon, who found that appellant no longer had residuals of the accepted condition and that his current medical conditions, which included lumbar spondylosis, were not causally related to the accepted injury. By decision dated April 4, 2007, an Office hearing representative affirmed the termination of benefits. On March 12, 2008 the Office denied modification of its previous decisions, finding that the weight of the medical evidence established that the accepted condition had totally resolved. In a nonmerit decision dated July 28, 2008, it denied appellant's request for reconsideration.

On December 28, 2008 appellant submitted a request for reconsideration. He contended that the Office should have expanded his claim to include bulging discs and herniations, as diagnosed by his treating physicians. Appellant also argued that the Office failed to properly consider all of the medical evidence of record, including documents relating to his other diagnosed conditions. He did not submit any additional documents in support of his reconsideration request.

By decision dated March 26, 2009, the Office denied appellant's request for merit review on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128 (a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,³ 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.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

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.⁴

ANALYSIS

Appellant's December 28, 2008 request for reconsideration did not demonstrate that the Office erroneously applied or interpreted a specific point of law, or that he advanced a relevant legal argument not previously considered by the Office. Although appellant alleged that the Office did not follow certain procedures by failing to expand his claim to include bulging and herniated discs, he submitted no evidence to support his contention. Moreover, his argument that he continues to suffer residuals from his accepted injury is repetitive. 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).

As noted above, appellant did not submit any new evidence with his reconsideration request. Therefore, he did not meet the third requirement listed in section 10.606(b) by constituting relevant and pertinent new evidence not previously considered by the Office.

The Board finds that the Office properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his December 28, 2008 request for reconsideration.

CONCLUSION

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

⁴ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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