United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 09-2351**
	)	**Issued: June 18, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Fairfield, CT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 28, 2009 appellant, through her attorney, filed a timely appeal of an August 26, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration of the merits of her claim. Because more than 180 days has elapsed between the most recent merit decision dated December 8, 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

This case has previously been before the Board.[1] In a March 7, 2007 decision, the Board reversed the Office's December 10, 2004 decision terminating appellant's compensation benefits

[1] Docket No. 06-1296 (issued March 7, 2007).

on the grounds that she refused an offer of suitable work.[2] The Board found that, as the Office did not properly consider appellant's reasons for refusing the offered position and did not provide the requisite 15 days for appellant to accept the position prior to terminating compensation benefits, it improperly invoked the penalty provision of 5 U.S.C. § 8106(c).

Appellant returned to full-time modified-duty work on May 9, 2007. On September 21, 2007 she filed a claim for a schedule award.

By decision dated June 6, 2008, the Office denied appellant's schedule award claim, finding the medical evidence insufficient to establish that she sustained any permanent impairment to a scheduled member due to the accepted November 30, 1977 employment-related injuries.

On June 6, 2008 appellant, through counsel, requested a telephonic hearing before an Office hearing representative. Appellant submitted a December 8, 1992 medical report from Dr. Arthur Taub, a Board-certified neurologist, who found that appellant sustained 30 percent impairment of the lumbar spine and 5 percent impairment of the right lower extremity.

In an October 26, 1984 computerized tomography (CT) scan report of appellant's lumbar scan, Dr. William E. Allen, a Board-certified radiologist, found mild right central disc herniation at L4-5 without interval change.

An April 26, 2002 report from Dr. Albert F. Walters, an attending Board-certified internist, reviewed a February 19, 1996 magnetic resonance imaging scan of appellant's cervical spine and found evidence of reversal of the normal curvature, anterior and posterior herniated discs at C5-C6.

In an October 6, 2008 report, Dr. Eric J. Katz, an orthopedic surgeon, reviewed appellant's medical records. He listed his findings on physical examination and diagnosed acute musculoligamentous strain of the cervical and lumbar spines. Dr. Katz also found evidence of cervical radiculopathy. He opined that appellant had reached maximum medical improvement. In an October 20, 2008 report, Dr. Katz advised that appellant's ongoing subjective complaints of neck and low back symptoms correlated to his physical findings of muscle spasm in both the neck and low back region. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he found that she sustained five to seven percent impairment of the cervical spine and five percent impairment of the lumbosacral spine due to the November 30, 1977 injuries.

By decision dated December 8, 2008, an Office hearing representative found the medical evidence insufficient to establish permanent impairment causally related to the November 30, 1977 injuries and affirmed the June 6, 2008 decision.

[2] On November 30, 1977 appellant, then a 28-year-old clerk, sustained injury to her back, neck and head as a result of being rear-ended while driving an employing establishment vehicle. She stopped work on December 1, 1977. The Office accepted appellant's claim for lumbar and cervical strains, right central herniated nucleus pulposus at L4-5 and temporary post-traumatic depression. On August 3, 1991 appellant returned to part-time limited-duty work. She stopped work again on October 21, 1991 alleging that she sustained a recurrence of disability on September 20, 1991 causally related to her November 30, 1977 employment-related injuries.

In a December 28, 2008 letter, appellant, through counsel, requested reconsideration of the December 8, 2008 decision. She submitted duplicate copies of Dr. Katz's October 6 and 20, 2008 reports.

By decision dated August 26, 2009, the Office denied appellant's request for reconsideration. It found that the evidence submitted was duplicative 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,[3] the Office regulations 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.[4] To be entitled to a merit review of an 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.[5] 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 December 28, 2008 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. She resubmitted Dr. Katz's October 6 and 20, 2008 reports. This evidence was previously of record and reviewed by the Office. Duplicative evidence does not warrant reopening a case for further merit review.[6]

---

[3] 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).

[4] 20 C.F.R. § 10.606(b)(1)-(2).

[5] *Id.* at § 10.607(a).

[6] *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 December 28, 2008 request for reconsideration.[7]

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 August 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[7] *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).