United States Department of Labor
Employees' Compensation Appeals Board

T.V., Appellant	)	
and	)	**Docket No. 09-1687**
	)	**Issued: March 5, 2010**
DEPARTMENT OF HOMELAND SECURITY, LAW ENFORCEMENT SUPPORT CENTER, Williston, VT, Employer	)	

Appearances:
Paul J. Perkins, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 8, 2009 appellant, through counsel filed a timely appeal from a December 8, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. The last merit decision was issued by the Office on September 6, 2007. As there is no merit decision of the Office within 180 days of the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.[1]

ISSUE

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

[1] The date of the appeal was determined by the postmark on the envelope accompanying the appeal.

FACTUAL HISTORY

On April 29, 2003 appellant, then a 25-year-old law enforcement technician, filed a traumatic injury claim alleging that on that date she sustained a left ankle sprain when she missed a step while walking down the stairs. She fell and twisted her ankle.

Appellant submitted an April 28, 2003 x-ray interpretation and April 28, 2003 emergency room reports from Fletcher Allen Health Care. The x-ray found no ankle fracture. The reports from Fletcher Allen Health Care reported left ankle discoloration and diagnosed a left ankle sprain.

In a June 29, 2006 report, Dr. Ivan Tomek, a treating physician, diagnosed a left hip labrum tear. He attributed this condition to appellant's fall on April 29, 2003. Dr. Tomek noted that at the time of the injury the focus had been on appellant's left foot injury, but that her left hip pain began at this time. He opined that appellant's pain and left hip labrum tear were consistent with her fall after missing a step while going down the stairs, particularly as she had no hip problems prior to this injury.

On August 16, 2006 appellant filed a claim for a recurrence of disability due to the April 29, 2003 injury. She noted that she had been in discomfort since the injury and that the diagnosis of a torn left hip labral was the cause of the discomfort.

In letters dated October 12, 2006, the Office informed appellant the evidence was insufficient to support her claim. As to appellant's claim for a traumatic injury, on April 29, 2003 the Office informed her that no diagnosis had been made due to the employment incident. She was advised as to the medical and factual evidence to submit. With respect to her recurrence claim, the Office informed her as to the definition of a recurrence and requested evidence to support her claim for medical treatment.

In a November 8, 2006 report, Dr. Tomek noted that he first saw appellant on March 22, 2006. He diagnosed a left hip labrum tear and related that appellant informed him that she had groin pain and discomfort which was aggravated by activity.

By decision dated January 17, 2007, the Office denied appellant's traumatic injury claim. It found the medical evidence was insufficient to establish that the left hip labrum tear was causally related to the April 29, 2003 employment incident.

In a letter dated February 12, 2007, appellant's counsel requested an oral hearing before an Office hearing representative, which was held on June 7, 2007. At the hearing Dr. Mark J. Bucksbaum, an examining Board-certified physiatrist, stated that he reviewed the medical records and opined that appellant's labral tear was directly related to the April 29, 2003 employment incident. He stated that there were "no other intervening events or suggestions to explain an alternate theory for a mechanism of injury." Dr. Bucksbaum testified that pain from a labral tear would not manifest for a period of months or years. He related that a labral tear is usually caused by trauma such as a rapid twisting motion or a fall and that appellant's fall was consistent for causing a labral tear.

In a February 12, 2007 report, Dr. Bucksbaum diagnosed traumatic left hip labral tear based upon a review of medical evidence, employment injury history and physical examination. He opined that appellant sustained a left hip labral tear due to the April 28, 2003 incident as she had no functional limitations or significant left hip pain prior to the April 28, 2003 incident.

By decision dated September 6, 2007, the Office hearing representative affirmed the denial of appellant's claim.

On September 5, 2008 appellant's counsel requested reconsideration and resubmitted the February 12, 2007 report by Dr. Bucksbaum. She contended that Dr. Bucksbaum's opinion was rationalized and that the fact that he examined her three years after the injury should not be determinative of its rationality.

By decision dated December 8, 2008, the Office denied appellant's request for reconsideration of the merits. It noted that appellant did not submit any new evidence with her request, but presented arguments in support of her request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's 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.[3] 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.[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 on the merits.[5]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7] While the reopening of a case may be predicated

[2] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that [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.

[3] 20 C.F.R. § 10.606(b)(2). *See J.M.*, 60 ECAB ___ (Docket No. 09-218, issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

[4] 20 C.F.R. § 10.607(a). *See S.J.*, 60 ECAB ___ (Docket No. 08-2048, issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

[5] 20 C.F.R. § 10.608(b). *See Y.S.*, 60 ECAB ___ (Docket No. 08-440, issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

[6] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[8]

ANALYSIS

The Office denied appellant's claim that she sustained an employment-related injury as a result of the April 29, 2003 employment incident. It found that there was insufficient medical evidence explaining how her left hip labrum/labral tear or other medical condition was due to the April 29, 2003 employment incident.

On September 5, 2008 appellant's counsel requested reconsideration and resubmitted a February 12, 2007 report by Dr. Bucksbaum. This report was previously of record and considered by the Office. Evidence which repeats or duplicates evidence already in the case record, however, has no evidentiary value and does not constitute a basis for reopening a case.[9]

On reconsideration, appellant asserted that Dr. Bucksbaum's testimony and report were rationalized and sufficient to support her claim that her labrum/labral tear was employment related. She has not, however, raised any specific argument showing how the Office erred in its January 17 and September 6, 2007 decisions. Appellant's representative merely recited excerpts from Dr. Bucksbaum statements, contending that the physician's reports were rationalized and sufficient to establish appellant's claim. She also noted that there is no contrary medical opinion evidence. The Office previously reviewed the medical evidence of record including the evidence from Dr. Bucksbaum and found that he failed to sufficiently explain how appellant's labral/labrum tear was causally related to the April 29, 2003 employment incident. Evidence which repeats or duplicates evidence already in the record does not constitute a basis for reopening the case for a merit review.[10] Appellant failed to meet any of the regulatory criteria for reopening her claim for further merit review.

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 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's September 5, 2008 request for reconsideration without conducting a merit review of the claim.

[8] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[9] *S.J.*, *supra* note 4; *Elaine M. Borghini*, 57 ECAB 549 (2006).

[10] *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2008 is affirmed.

Issued: March 5, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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