

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

R.B., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
CENTER FOR HUMAN RESOURCES, NEPSC,)
Jamaica, NY, Employer)

**Docket No. 10-713
Issued: November 22, 2010**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument September 23, 2010

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 6, 2009 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was an August 1, 2008 decision terminating wage-loss and medical benefits. The Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On March 6, 2007 appellant, a 70-year-old teleservice representative, filed a traumatic injury claim alleging that she sustained injuries to her hands and knees when she fell while pushing a cart in front of a revolving door. She stopped work on the date of injury. The Office accepted appellant's claim for neck sprain.

In an October 4, 2007 second opinion report, Dr. Frank Hudak, a Board-certified orthopedic surgeon, advised that appellant's accepted condition had resolved. He noted that she suffered from several nonwork-related conditions, including degenerative arthritis and degenerative disc disease of the cervical spine, degenerative disc disease of the lumbosacral spine, and degenerative arthritis of the right and left knees. Dr. Hudak found that she was capable of returning to full-time work as a teleservice representative with restrictions. On January 4, 2008 appellant's treating physician, Dr. Yosef Morad, a Board-certified orthopedic surgeon, stated that appellant suffered from neck, bilateral knee and lower back pain and continued to be disabled as a result of her accepted injury.

The Office referred appellant to Dr. Stanley Soren, a Board-certified orthopedic surgeon, in order to resolve the conflict in medical opinion between Dr. Hudak and Dr. Morad as to whether she continued to experience residuals from the accepted injury. In a report dated February 20, 2008, Dr. Soren reviewed the history of injury and treatment, provided examination findings and reviewed the medical record and statement of accepted facts. He diagnosed cervical sprain, preexisting degenerative spine disease, and contusion/sprain of the wrists and hands, knees and lumbosacral area. Dr. Soren advised that the accepted cervical strain had resolved and any residuals related to her underlying degenerative condition. He concluded that she was able to perform her date-of injury job with restrictions.

In a March 13, 2008 report, Dr. Wael Kamel, a Board-certified psychiatrist and neurologist, treated appellant for pain in her left shoulder and left upper extremity. On examination he found tenderness and decreased range of motion in the left shoulder. Dr. Kamel opined that appellant's symptoms were secondary to focal left shoulder pathology with a cervical radicular component.

Appellant submitted a March 31, 2008 report from Dr. Mehran Manouel, a Board-certified orthopedic surgeon, who noted that appellant sustained injuries to both knees, left shoulder and back when she fell at work while pushing a cart. Physical examination of the cervical and lumbar spine showed tenderness to palpation and decrease in range of motion of the cervical spine. The left shoulder revealed a markedly impaired range of motion. There was anterior tenderness and a positive impingement sign. Dr. Manouel diagnosed cervical sprain, lumbar sprain, bilateral knee sprain and bilateral shoulder sprain. He opined that appellant was totally disabled as a result of her work injury.

On May 14, 2008 the Office notified appellant of its intent to terminate her medical and wage-loss benefits based upon Dr. Soren's opinion that she no longer had residuals from her accepted injury.

Appellant submitted a June 4, 2008 report from Dr. Manouel who diagnosed left shoulder impingement due to her work-related injury.

In an August 1, 2008 decision, the Office terminated appellant's medical and wage-loss benefits. Appellant was advised of her rights of appeal, which included the right to request an oral hearing or reconsideration, or to appeal to the Board within one year of the date of the decision.

On July 20, 2009 appellant filed an appeal request form requesting reconsideration of the August 1, 2008 decision. In a July 14, 2009 letter, she contended that she had not been paid for compensation between August 6, 2007 and April 4, 2008, prior to her return to work. Appellant stated that she "would like to appeal the decision you not paying me for the time I was not working due to my job-related injury."

Subsequent to the August 1, 2008 termination decision, appellant submitted an August 6, 2008 report from Dr. Manouel, who provided findings on examination and opined that her symptoms were directly related to the accepted injury. She also submitted a report of an electromyogram, dated March 21, 2008, and a copy of Dr. Kamel's March 13, 2008 report.

In a nonmerit decision dated August 6, 2009, the Office denied the request for reconsideration finding that appellant had not raised substantive legal questions or submitted new and relevant evidence. It noted her concern regarding claimed nonpayment of benefits from August 6, 2007 through April 4, 2008. The Office advised appellant that her entitlement to compensation during those periods was an outstanding issue, which was unrelated to the August 1, 2008 decision and would be addressed in a separate decision.

On appeal, appellant reiterated that she had not been paid for compensation between August 6, 2007 and April 4, 2008, prior to her return to work in April 2008.

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 regulations provide that the evidence or argument submitted by 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

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the 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)(2).

⁴ *Id.* at § 10.607(a).

merits.⁵ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

ANALYSIS

Appellant's July 20, 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, 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).

Subsequent to the August 1, 2008 termination decision, appellant submitted an August 6, 2008 report from Dr. Manouel, who provided findings on examination and opined that her symptoms were directly related to the accepted injury. Dr. Manouel's report merely reiterated information contained in documents previously received and reviewed by the Office and is, therefore cumulative and duplicative in nature.⁷ The Board finds that his report does not constitute relevant and pertinent new evidence not previously considered by the Office.⁸ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The remaining evidence submitted is also insufficient to warrant merit review. The March 21, 2008 EMG report does not contain an opinion on the issue decided by the Office on August 1, 2008, namely whether appellant had residuals from, or was disabled due to, her accepted injury. Therefore, it is irrelevant.⁹ Dr. Kamel's March 13, 2008 duplicate report has no evidentiary value.¹⁰

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 July 20, 2009 request for reconsideration.

On appeal, appellant argues that she is entitled to compensation for certain periods prior to the termination of her benefits. The Board notes that the Office advised appellant in the August 6, 2009 decision that her entitlement to compensation during those periods was an outstanding issue which would be addressed in a separate decision. As the record does not

⁵ *Id.* at § 10.608(b).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

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. *Denis M. Dupor*, 51 ECAB 482 (2000).

⁸ *See Susan A. Filkins*, 57 ECAB 630 (2006).

⁹ *Edward Matthew Diekemper*, *supra* note 6.

¹⁰ *Denis M. Dupor*, *supra* note 7.

contain a final decision regarding appellant's claims for these periods, the Board does not have jurisdiction over the merits of these claims.¹¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 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

¹¹ See 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).