United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 10-1080**
	)	**Issued: November 29, 2010**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 12, 2010 appellant filed a timely appeal of a September 16, 2009 decision of the Office of Workers' Compensation Programs, denying merit review of his claim. The record contains an April 8, 2009 Office merit decision that terminated medical benefits and modified a wage-earning capacity determination. With respect to final adverse decisions of the Office issued on and after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days of the issuance of the Office's decision.[1] Since more than 180 days elapsed between the April 8, 2009 merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 29 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly found that appellant's application for reconsideration was insufficient to warrant further merit review of the claim under 5 U.S.C. § 8128(a).

[1] 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

The Office accepted that appellant sustained lumbar and thoracic strains in the performance of duty on April 26, 1988. By decision dated February 24, 1992, it found the selected position of security guard represented his wage-earning capacity and reduced his wage-loss compensation.

Appellant was subsequently referred for a second opinion examination by Dr. Harold Alexander, an orthopedic surgeon. In a report dated September 11, 2008, Dr. Alexander opined that the work injuries had resolved. By letter dated February 9, 2009, the Office advised appellant that it proposed to terminate medical benefits and modify his wage-earning capacity to reflect no loss of wage-earning capacity.

In a decision dated April 8, 2009, the Office terminated medical benefits and modified the wage-earning capacity to zero effective April 12, 2009.

On July 13, 2009 appellant requested reconsideration of his claim. In a June 8, 2009 letter, he stated that he did not decline vocational rehabilitation in 1992 and contended that the Office had reduced his compensation for no reason. In an undated statement received on August 4, 2009, appellant questioned how a person could perform a security guard position with a nervous condition and argues that the Office had disregarded his physician's opinion. As to the medical evidence, he resubmitted a February 15, 1993 report from Dr. Raymond Crittenden, a psychologist, a work capacity evaluation (Form OWCP-5c) dated May 9, 2006 from Dr. Daniel Michael, an orthopedic surgeon, and an April 18, 2008 report from Dr. Jerry Bynum, a psychologist. Each report was previously of record.

By decision dated September 16, 2009, the Office denied appellant's application for reconsideration, finding it insufficient to warrant further merit review of the claim.

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 may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."[3] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[4]

[2] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The Office terminated appellant's medical benefits and reduced his wage-loss compensation to zero in an April 8, 2009 decision.

ANALYSIS

On July 13, 2009 appellant submitted an application for reconsideration. He stated that he did not ever decline vocational rehabilitation and he disagreed with the 1992 wage-earning capacity determination. The 1992 wage-earning capacity was based on a determination that the selected position of security guard was medically and vocationally suitable. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. He indicated that he did not believe that the selected position was medically suitable, but appellant did not submit any new and relevant evidence on the issue. The medical reports submitted were previously of record and considered by the Office.[5]

On appeal appellant reiterated his belief that his compensation should be reinstated. The only issue on appeal is whether the Office properly determined that his application for reconsideration was insufficient to warrant merit review. The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10. 606(b)(2). He failed to establish that the Office erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument, or submit relevant and pertinent evidence not previously considered by the Office. Accordingly, under 20 C.F.R. § 10.608(b), the Office properly declined to reopen the case for merit review.[6]

CONCLUSION

The Board finds the Office properly determined appellant's application for reconsideration was insufficient to warrant further merit review.

[5] Evidence that repeats or duplicates that already of record and considered does not constitute a basis for reopening a case. *See James W. Scott*, 55 ECAB 606 (2004); *Eugene F. Butler*, 36 ECAB 393 (1984).

[6] On appeal appellant also indicated that he had filed an application for reconsideration with the Office, but wished to pursue his appeal with the Board. During the period the Board had jurisdiction over the case, the Office issued an April 26, 2010 merit decision. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions which change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). The Board finds the April 26, 2010 Office decision is null and void.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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