

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

T.L., Appellant)	
)	
and)	Docket No. 10-694
)	Issued: October 7, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Brooklyn, NY, Employer)	

Appearances:
Thomas S. Harkins, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 12, 2010 appellant filed a timely appeal from a July 30, 2009 Office of Workers' Compensation Programs' nonmerit decision. Because more one year elapsed between the last merit decision dated May 19, 2008 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

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

Appellant, a 46-year-old police officer, injured her right knee, left knee and lower back on May 30, 2002 when she jumped out of the way of a speeding vehicle. She filed a claim on June 21, 2002 which the Office accepted for acute meniscus tear of the right knee and lumbar strain. Appellant returned to work on light duty.²

On January 29, 2004 the Office authorized arthroscopic surgery for appellant's left knee, which she underwent on March 2, 2004.

On June 11, 2005 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability as of November 11, 2004 causally related to her accepted right knee, left knee and lower back conditions.³ She noted that she had undergone left knee replacement surgery and that she received treatment for her alleged recurrence of disability on November 17, 2004.

By letter dated November 28, 2005, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits based on a recurrence of disability. It asked her to submit evidence showing that she was unable to perform her light-duty position as of November 11, 2004. The Office requested evidence showing there was a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The Office asked appellant to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition as of November 11, 2004 was causally related to her accepted May 30, 2002 employment injuries.

By decision dated January 5, 2006, the Office found that appellant did not establish a recurrence of her accepted May 30, 2002 employment injury.

By letter dated December 18, 2006, appellant's attorney requested reconsideration.

In a report dated March 14, 2005, received by the Office on December 28, 2006, Dr. Walter F. Pizzi, Board-certified in orthopedic surgery, stated that he examined appellant following her May 30, 2002 work injury. He noted, however, that he only treated her lumbar injury at that time. Dr. Pizzi advised that she currently had complaints of low back and left knee pain, which was occasionally severe. Appellant underwent left knee replacement surgery on November 17, 2004. Dr. Pizzi advised that the injuries she sustained were causally related to the accident, as she reported it. Based on her clinical examination, her "suggestive" complaints of pain, his review of medical records and diagnostic tests, appellant had a 54 percent loss of function of her lumbar spine and a 45 percent loss of function of her left leg. Given the fact that these limitations continued to exist nearly three years after her injury, they would become

² The record does not contain any documentation pertaining to the duties of appellant's light-duty job; nor is there any indication as to when she started working at this job.

³ Appellant previously filed a claim for recurrence of disability, which the Office accepted on March 30, 2004.

permanent. He stated that appellant would continue to experience pain and discomfort in the future and that she was totally disabled for work.

In a May 14, 2005 report, Dr. Jose A. Rodriguez, Board-certified in orthopedic surgery, stated that he examined appellant on October 11, 2004 for left-sided knee pain which had progressively worsened over the prior two years. The pain was severe in intensity and appellant related that she also experienced spasms within the knee. Dr. Rodriguez noted that her knee pain was aggravated by all activities, including walking, standing and stair climbing. Appellant underwent physical therapy with no significant symptomatic relief.

Dr. Rodriguez examined appellant again on December 14, 2004 and January 31, 2005, at which time she was making slow but steady progress in physical therapy. He noted that she was able to walk with a mild residual limp. On examination, appellant had somewhat limited extension in the left knee, with mild residual soft tissue swelling at the knee and below, good stability, relatively good motor power and a functional range of motion. He anticipated partial improvement, with some restriction in motion and pain. Dr. Rodriguez noted that appellant's ability to run or kneel would always be limited.

In a March 16, 2007 decision, the Office denied modification of the January 5, 2006 decision.

By letter dated February 13, 2008, appellant's attorney, requested reconsideration. Counsel contended that the Office accepted the left knee condition when it authorized the March 2, 2004 left knee surgery. Because she stopped work on November 11, 2004 to undergo left knee replacement surgery on November 17, 2004, she sustained a recurrence of disability. Appellant resubmitted the March 14, 2005 reports from Drs. Pizzi and Rodriguez.

By decision dated May 19, 2008, the Office denied modification of its prior decisions. It found that appellant failed to submit medical evidence sufficient to establish that her disability as of November 11, 2004 was caused or aggravated by her accepted conditions.

By letter dated May 11, 2009, appellant's attorney requested reconsideration. He reiterated his contention that appellant sustained a recurrence of disability on November 11, 2004 when she stopped work to undergo left knee replacement surgery. Appellant resubmitted the May 14, 2005 reports from Drs. Pizzi and Rodriguez.

In a July 30, 2009 decision, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.⁴ Evidence that repeats

⁴ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

ANALYSIS

Appellant has not established that the Office erroneously applied or interpreted a specific point of law; she did not advance a relevant legal argument not previously considered by the Office; and she did not submit relevant and pertinent evidence not previously considered by the Office. She did not submit any new medical evidence with her May 11, 2009 reconsideration request. The reports from Drs. Pizzi and Rodriguez were previously submitted and considered by the Office. Further, appellant advanced arguments that are cumulative of contentions she raised and were considered by the Office. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

On appeal, counsel reiterated his contention that appellant sustained a recurrence of disability on November 11, 2004 because appellant stopped work to undergo surgery for her left knee condition. The Board lacks jurisdiction to consider the merits of the claim and can only review whether appellant submitted new evidence or legal arguments in support of the request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits under 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 7, 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