

FACTUAL HISTORY

On November 9, 2007 appellant, then a 49-year-old record clerk, filed an occupational disease claim alleging that she developed muscle spasms, back and neck pain as a result of lifting and moving file boxes.² She stopped work on October 29, 2007 and worked intermittently thereafter.

Appellant was initially treated by Dr. Julian Parsons, an internist, on November 30, 2007, for low back pain, which began after lifting heavy boxes at work. Dr. Parsons diagnosed neck spasms, low back pain and spasms and recommended physical therapy. On December 13 and 26, 2007 appellant was treated by Dr. Lawrence S. Bluth, a neurologist, for chronic low back pain. Dr. Bluth noted an intact neurological examination with no signs of myelopathy or radiculopathy and diagnosed musculoskeletal pain syndrome. An electromyogram (EMG) dated December 26, 2007 revealed no abnormalities. Appellant came under the treatment of Dr. R. Alexander Mohr, a Board-certified orthopedist, from January 14 to February 18, 2008, for persistent neck and back pain that failed to respond to conservative treatment. She reported that her back pain began after lifting boxes at work. Dr. Mohr diagnosed mild curvature of the thoracolumbar spine, lumbar disc disease and myofascial syndrome likely due to overuse. Appellant also submitted physical therapy notes.

On January 29, 2008 the Office accepted the claim for lumbar muscle spasm.

Appellant filed a Form CA-7, claim for compensation, for total disability for the period of October 24, 2007 to March 1, 2008. She requested that the Office expand her claim to include myofascial syndrome, lumbar disc disease, cervical spasms and thoracic spasm. Appellant submitted a position description for a records clerk.

In a March 25, 2008 decision, the Office denied appellant's claim for myofascial syndrome, lumbar disc disease, cervical spasms and thoracic spasm.³

Appellant also submitted a CA-7 form claiming compensation for total disability for the period March 2 to 29, 2008. She submitted reports from Dr. Mohr dated April 8 and 10, 2008. Dr. Mohr treated appellant for persistent neck and back pain and diagnosed mild curvature of the thoracolumbar spine, lumbar disc disease and myofascial syndrome likely due to overuse. In a April 10, 2008 work release form, he released her to work on April 14, 2008 with restrictions.

In a decision dated May 21, 2008, the Office denied appellant's claim for compensation for the period October 24, 2007 to March 29, 2008 on the grounds that the medical evidence was insufficient.

On June 12, 2008 appellant requested an oral hearing which was held on October 7, 2008. She submitted a letter from her director, Ethan Enzer, dated January 14, 2008, requesting that she

² Appellant also filed a notice of traumatic injury (Form CA-1) on October 26, 2007 for a neck, back and shoulder injury from lifting boxes on October 24, 2007.

³ On May 2, 2008 appellant requested a hearing from an unspecified decision.

submit a completed duty status form in support of her absence from work. Also submitted was a job offer for a clerk dated May 28, 2008. Appellant submitted a May 29, 2008 report from Dr. Mohr who diagnosed lumbar disc disease and recommended physical therapy for six weeks. Also submitted was a September 23, 2008 statement from a union steward who noted accompanying appellant to a meeting with management regarding her work duties.

In a decision dated December 9, 2008, the hearing representative affirmed the March 25 and May 21, 2008 Office decisions. The hearing representative determined that appellant had not established that she developed musculoskeletal pain syndrome or mild fascial syndrome causally related to factors of employment or that she was totally disabled from work from October 24, 2007 to March 29, 2008 causally related to her accepted work injury.

On June 7, 2009 appellant requested reconsideration. In undated statements received on June 11 and July 10, 2009 she noted that she has been under constant treatment for her work injury since 2007 and had been on light duty since June 2008. Appellant asserted that her supervisor did not provide an accurate description of her work duties and failed to provide her with an ergonomic chair.

In support of her request appellant submitted a copy of her CA-1 form, a position description, an EMG dated December 13, 2007, reports from Dr. Parsons dated October 26 and November 30, 2007, reports from Dr. Bluth dated December 13 and 26, 2007, a consent form dated December 13, 2007, a report from Dr. Mohr dated January 14, 2008, letters from Mr. Enzer dated January 14 and May 28, 2008, correspondence from appellant's attorney in March 2008, a CA-7 form dated April 10, 2008, a September 23, 2008 letter from a union steward, an Office decision dated December 8, 2008 and a position description, all previously of record.

Appellant submitted new evidence including emails from October 26, 2007 to July 14, 2009 pertaining to her work duties; a notice of intent to offset salary dated April 1, 2008; a May 28, 2009 pleading from Bankruptcy Court; narrative statements dated April 10, 2008 to June 10, 2009 pertaining to her work duties; a notice of recurrence of disability dated May 28, 2009; a Board appeal form dated June 8, 2009 and a prescription list dated June 8, 2009. Also submitted was a June 9, 2009 statement from Sherrie Bell, a coworker, who noted witnessing appellant lift files in 2007 and complain of back pain. She indicated that after appellant returned to work after a year off she was provided with assistance to perform her work duties; however, the assistance was temporary. Appellant submitted a CA-1 form notice of traumatic injury, alleging that she sustained an injury on July 24, 2009 and an Equal Employment Opportunity (EEO) complaint dated July 10, 2009.

Appellant submitted new medical reports and notes from Dr. Mohr dated February 18 to December 17, 2008, who treated her for chronic lumbar pain exacerbated by her work environment and diagnosed myofascial syndrome related to overuse. In an April 8, 2008 report, Dr. Mohr noted a history of her work injury and subsequent treatment. He noted findings of normal motor strength of the lower extremities, intact sensation from L1 to S1 and C2 to T2 and equal and symmetrical reflexes. Dr. Mohr diagnosed mild myofascial syndrome related to overuse pathology, which appellant related to her job of lifting multiple heavy boxes. He recommended physical therapy and continued her light-duty restrictions. In a return to work slip

dated July 31, 2009, Dr. Mohr that noted appellant could work with restrictions. Also submitted were reports from Dr. Robert J. Boolbol, a Board-certified anesthesiologist, dated August 14, 2008 to May 12, 2009. Dr. Boolbol treated appellant for low back pain which began in October 2007 after a lifting incident at work. He noted that she underwent a course of conservative treatment without symptomatic improvement. On August 20, 2008 Dr. Boolbol diagnosed chronic lumbar radicular pain, degenerative disc disease, lumbar spondylosis, lumbar facet syndrome and myofascial pain syndrome. Appellant reported developing symptoms while performing repetitive activity while at work. In reports dated November 25, 2008 to April 14, 2009, Dr. Boolbol noted that she underwent an epidural steroid injection and a lumbar medial branch block with only temporary improvement in her symptoms. In work release slips dated March 16 and June 22, 2009, he returned appellant to light-duty work with restrictions. On July 7, 2009 Dr. Boolbol advised that she was totally disabled from July 1 to 2, 2009. Appellant also submitted an April 30, 2009 report from Dr. Inam U. Kureshi, a Board-certified neurosurgeon, who treated her for severe back pain which began in October 2007 after a lifting incident at work. Dr. Kureshi noted normal strength in the upper and lower extremities, normal sensory examination and reflexes were equal and symmetrical. He diagnosed soft tissue back injury with no evidence of structural damage.

In an August 19, 2009 decision, the Office denied appellant's reconsideration request on the grounds that her request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁵ which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by the [Office]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁶

ANALYSIS

Appellant's reconsideration requests 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.

Appellant's requests for reconsideration noted that she had been under constant treatment for her work injury since 2007 and had been on light duty since June 2008. She asserted that her supervisor did not provide an accurate description of her work duties and failed to provide her with an ergonomic chair. However, appellant's letters did not show how 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. She did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law. 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a copy of her CA-1 form, a position description, an EMG dated December 13, 2007, reports from Dr. Parsons dated October 26 and November 30, 2007, reports from Dr. Bluth dated December 13 and 26, 2007, a consent form dated December 13, 2007, a report from Dr. Mohr dated January 14, 2008, letters from Mr. Enzer dated January 14 and May 28, 2008, correspondence from appellant's counsel in March 2008, a CA-7 form dated April 10, 2008, a September 23, 2008 letter from a union steward, an Office decision dated December 8, 2008 and a position description. The Board notes that this evidence is duplicative of evidence already contained in the record and was previously considered by the Office in its December 19, 2008 decision and found to be insufficient.⁷ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant submitted emails from October 26, 2007 to July 14, 2009 regarding her work duties, a notice of intent to offset salary dated April 1, 2008, a pleading from Bankruptcy Court dated May 28, 2009 and several narrative statements dated April 10, 2008 to June 10, 2009. Similarly, she submitted a notice of recurrence of disability dated May 28, 2009, an Board appeal form dated June 8, 2009, a prescription list dated June 8, 2009, a June 9, 2009 statement from Ms. Bell, a notice of traumatic injury and an EEO complaint dated July 10, 2009. However, this evidence, while new, is not relevant because it does not specifically address the issues of whether appellant developed musculoskeletal pain syndrome or mild fascial syndrome causally related to

⁶ *Id.* at § 10.608(b).

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 case; *see Daniel DeParini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

her work or whether she was totally disabled from work from October 24, 2007 to March 29, 2008 causally related to her accepted work injury.

Appellant submitted new medical evidence from Dr. Mohr dated February 18 to December 17, 2008, who treated her for chronic lumbar pain exacerbated by her work environment and diagnosed myofascial syndrome related to overuse. In an April 8, 2008 letter, Dr. Mohr noted a history of her work injury and diagnosed mild myofascial syndrome related to overuse pathology. In a July 31, 2009 return to work slip, he noted that appellant could work with restrictions. However these reports are similar to Dr. Mohr's prior reports of January 14, February 18, April 8 and May 29, 2008 already contained in the record and were previously considered by the Office in its decision dated December 19, 2008 and found deficient.⁸ Therefore, this evidence is insufficient to warrant a merit review.

Also submitted were reports from Dr. Boolbol from August 14, 2008 to May 12, 2009, who treated appellant for low back pain that began after a lifting incident at work in October 2007 and noted diagnoses. In reports dated March 4 and April 14, 2009, he noted appellant's course of treatment and status. Dr. Boolbol noted in work release slips dated March 16 and June 22, 2009 that she could return to work light duty but was totally disabled from July 1 to 2, 2009. On August 20, 2008 he diagnosed chronic lumbar radicular pain, degenerative disc disease, lumbar spondylosis, lumbar facet syndrome and myofascial pain syndrome and advised that appellant reported developing symptoms while performing repetitive activity while at work. Similarly, appellant submitted an April 30, 2009 report from Dr. Kureshi who treated her for severe back pain which began in October 2007 while lifting at work. Dr. Kureshi noted an essentially normal physical examination and diagnosed soft tissue back injury with no evidence of structural damage. These reports, while new, are not relevant because they do not specifically address the issues of whether appellant developed musculoskeletal pain syndrome or mild fascial syndrome causally related to her work or whether she was totally disabled from work from October 24, 2007 to March 29, 2008 causally related to her accepted work injury. While some of these reports note the history of injury and her belief on causal relationship, they do not contain Dr. Kureshi's own opinion addressing causal relationship on the underlying issues. Therefore, these reports are insufficient to warrant a merit review.

Therefore, the Office properly denied a merit review as appellant did not show that the Office erroneously applied or interpreted a point of law; advance a point of law or fact not previously considered by the Office and did not submit relevant and pertinent evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

⁸ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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