United States Department of Labor
Employees' Compensation Appeals Board

W.H., Appellant	)	
and	)	**Docket No. 10-546**
	)	**Issued: September 20, 2010**
DEPARTMENT OF THE NAVY, NAVAL SEA SYSTEMS COMMAND, San Diego, CA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 22, 2009 appellant filed a timely appeal from a June 26, 2009 Office of Workers' Compensation Programs' merit decision. As the most recent merit decision is dated June 9, 2008, more than one year prior to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for further review of the merits of this case under 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 November 7, 2007 appellant, then a 52-year-old railroad maintenance worker, filed a Form CA-2a claiming a recurrence of total disability on November 2, 2007. He claimed that he had always had trouble with his left hand since his original work injury of July 26, 1995 but that it had recently required medical treatment. By letter dated April 2, 2008, the Office requested additional factual and medical evidence in support of appellant's claim and allowed him 30 days to respond. It noted that his original injury had been accepted for a contusion of the back but was later expanded to include a left wrist contusion.

Appellant submitted a February 12, 2008 treatment note of Dr. Michael Butler, Board-certified in family medicine, noting that appellant was having persistent pain over the left wrist. Dr. Butler noted an old fracture that was not healing and causing arthritis. He suggested surgery.

By decision dated June 9, 2008, the Office noted that appellant had returned to light duty on August 9, 1995 after the injury and that after an examination on September 3, 1996 no further medical attention was required for the wrist or back conditions. It found that the factual and medical evidence did not establish that the current wrist condition resulted from the accepted work injury. The Office noted that Dr. Butler's report was 11 years after the date of last treatment and it did not provide any history of the original injury nor provide any contemporaneous medical evidence that bridges the accepted wrist condition with the current diagnosed condition.

By form dated May 30, 2009, appellant requested reconsideration. In support of his request, he submitted a personal statement and medical evidence consisting of treatment notes and medical prescription notes from Dr. Butler from 1994 through 1995; treatment notes and duty status reports from the employing establishment clinic from 1995 through 1996; an x-ray of the wrist dated November 2, 2007; an undated compact disc with x-rays of the left hand and wrist; treatment notes from Dr. Butler dated November 2 and December 13, 2007; treatment notes from Dr. Monica Albers, an orthopedic hand surgeon, dated March 19, 2009 and from Dr. Christopher Olch, Board-certified in orthopedic surgery, dated November 6, 2007.

The Office found the evidence insufficient to warrant a merit review as it was either already in the record and therefore duplicative or it was new evidence but immaterial to the underlying question of whether the current left wrist condition was caused by the work incident of July 26, 1995.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's 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.[2] Section 10.608(b) of Office regulations provides that when an

[2] *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record or does not address the particular issue involved does not constitute a basis for reopening a case.[4]

ANALYSIS

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law nor has he advanced a relevant legal argument not previously considered by the Office.

In support of his reconsideration request, appellant submitted a statement as to his belief that his wrist condition had never been properly evaluated and all the current problems should be considered work related. His lay opinion, however, is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.[5]

Appellant also submitted several new medical reports from his treating physician, Dr. Butler, as well as referral physicians Dr. Olch and Dr. Albers.[6] Each of these reports evaluated appellant's left wrist. Dr. Butler had been appellant's treating physician during the period of appellant's work-related injury. He noted: "In actuality [appellant] has been having some problems with limitation of motion of the wrist since an accident back in 1995. At that time he did not injure the area while at the shipyard. This was never really explored that much since he mostly had problems with his back at that time." Although referencing the original injury, Dr. Butler fails to discuss any causal connection between the original injury and the current condition. Dr. Olch also evaluated appellant's left wrist, referred to the "original" injury of July 26, 1995 and noted "chronic swelling and occasional pain in his left wrist and decreased range of motion," but did not reference how the original injury was the cause of the current conditions. Dr. Albers' report, although discussing the current condition of appellant's wrist, made no reference to the original injury.

The Office denied merit review on the grounds that the new evidence was not relevant to the underlying issue in the case. Appellant's claim was filed for a recurrence but denied, as he had submitted no evidence to causally connect, 11 years later, the original wrist contusion to the

[3] *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

[4] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *D.K.*, *supra* note 2; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[5] *L.G.*, 61 ECAB ___ (Docket No. 09-1517, issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

[6] The remaining evidence was already in the record. The Board has held that newly submitted evidence which is only repetitive or duplicative of evidence existing in the record is not sufficient to warrant further merit review. *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *W.H. Van Kirk*, 28 ECAB 542 (1977).

conditions he was currently experiencing. On reconsideration, the proffered medical evidence did not address the underlying issue of causal relationship between the current symptoms and the original injury. The Board has held where the evidence does not address the particular issue involved in the underlying case a merit review is not warranted.[7]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence addressing the particular issue involved in this case. Therefore, the Board finds that appellant was not entitled to a merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for further merit review under section 8128 of the Act.

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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

[7] *Supra* note 3.