United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 10-1815**
	)	**Issued: April 7, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Jamaica, 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, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2010 appellant, through his attorney, filed a timely appeal from a May 20, 2010 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. As the last merit decision dated December 15, 2009 was issued more than 180 days before the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c). Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the May 20, 2010 nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request to reopen his claim for further review of the merits under 5 U.S.C. § 8128.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 4, 2008 appellant, then a 51-year-old supervisory transportation security officer, filed a claim alleging that on June 1, 2008 he experienced pain in his left leg and knee while moving baggage. The Office accepted the claim for a tear of the medial meniscus of the left knee. It paid him compensation beginning July 23, 2008.

By decision dated December 15, 2009, the Office terminated appellant's entitlement to compensation effective December 20, 2009 on the grounds that he refused an offer of suitable work. It noted that it had previously considered a statement he submitted on July 20, 2009 in which he explained that he could not perform the offered position as he could not travel to his worksite or adequately navigate at work while performing his duties. The Office found that the employing establishment had sufficiently responded to appellant's arguments and thus determined that he had not provided an acceptable reason for refusing the offered position. It further found that the medical evidence established that the position was within the restrictions agreed to by both the second opinion examiner and his attending physician.

On January 12, 2010 appellant, through his attorney, requested reconsideration. Counsel argued that the medical evidence showed that he was unable to perform the duties of the position "*including the commuting requirements associated therewith.*" (Emphasis in the original). He asserted that the inability to commute to work constituted an acceptable reason for refusing a position according to the Office's procedures. Counsel resubmitted appellant's undated statement previously received by the Office on July 20, 2009 that explained why he could not accept the limited-duty position.

By decision dated May 20, 2010, the Office denied appellant's request for reconsideration after finding that the evidence and arguments submitted on reconsideration were repetitive and insufficient to warrant reopening the case for merit review. It determined that it had already considered the statement appellant submitted with his request for reconsideration. The Office further found that it had previously considered the argument raised by appellant's attorney that he was unable to perform the duties of the position or commute to the job.

On appeal appellant's attorney generally contends that the Office improperly terminated appellant's compensation as the position offered by the employing establishment was not suitable. He asserts that the Office's decision on reconsideration did not negate the evidence contained in his reconsideration request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[2] the Office's regulations provide that 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

[2] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

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 merits.[5]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[6] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[7]

ANALYSIS

The Office accepted that appellant sustained a tear of the medial meniscus of the left knee on June 1, 2008 in the performance of duty. He received compensation for total disability beginning July 23, 2008. By decision dated December 15, 2009, the Office terminated appellant's compensation effective December 20, 2009 after finding that he refused an offer of suitable work under section 8106. On June 12, 2010 appellant requested reconsideration.

The Board does not have jurisdiction over the December 15, 2009 Office decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) requiring the Office to reopen the case for review of the merits of the claim. In the June 12, 2010 request for reconsideration, his attorney argued that he was unable to perform the duties of the position and could not commute to or around his workstation. Counsel noted that an inability to commute was an acceptable reason for refusing suitable work according to Office procedures. The Office, however, previously considered appellant's allegation that he could not commute to or around the work location but found that the employing establishment had adequately addressed his allegations. It concluded that he had not established an acceptable reason for refusing suitable work. In its termination of his compensation for refusing suitable work, the Office also weighed the medical evidence and found that it established that he could perform the duties of the position. On reconsideration appellant's attorney generally alleged that the Office did not follow its procedures but did not identify a specific legal error committed by the Office in finding that he had not provided acceptable reasons for refusing the position. Evidence or argument which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] Consequently, appellant has failed to identify a specific point of law erroneously applied or interpreted or advance a new and relevant legal argument.

[3] 20 C.F.R. § 10.606(b)(2).

[4] *Id.* at § 10.607(a).

[5] *Id.* at § 10.608(b).

[6] *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

[7] *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[8] *Richard Yadron*, 57 ECAB 207 (2005).

A claimant may also be entitled to merit review by submitting pertinent new and relevant evidence. Appellant, through his attorney, submitted an undated statement that duplicated a statement previously received by the Office on July 20, 2009. As this statement duplicated evidence already in the case record and considered by the Office prior to terminating his compensation for refusing suitable work, it does not constitute a basis for reopening the case.[9]

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). On appeal appellant's attorney generally contends that the job offered by the employing establishment was not suitable. He does not, however, identify any specific error of law by the Office in its decision. Counsel also maintains that the Office failed to negate his arguments. He has the burden, however, to establish that the case should be reopened for further consideration of the merits by showing that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent evidence not previously considered. As he failed to submit evidence of argument that meets this standard, pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request to reopen his claim for further review of the merits under section 8128.

[9] *D.K.*, 59 ECAB 151 (2007); *Mary A. Ceglia*, 55 ECAB 626 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2010 is affirmed.

Issued: April 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board