

FACTUAL HISTORY

On June 1, 2006 appellant, then a 33-year-old letter carrier, alleged that she pulled a muscle in her upper back while opening a sticky mailbox unit. The Office accepted the claim for cervical strain and displacement of a cervical intervertebral disc at C5-6 without myelopathy.

Appellant returned to work from June 5 to 14, 2006 and was off work from June 15 to July 3, 2006, when she returned to full light duty. She worked from July 3 to September 22, 2006 and was off work from September 22, 2006 to June 16, 2007. Appellant worked for 6 hours on June 16, 2007 and for 5.99 hours on June 18, 2007 and was off work again until August 31, 2007.

In a September 1, 2006 report, Dr. Erik Ackerman, a specialist in emergency medicine and occupational medicine, stated that appellant had complaints of neck and right arm pain. Appellant had a mild right arm tremor, with numbness and tingling in her right arm. Dr. Ackerman stated that she had developed a head weave on the day of her visit. He noted that results of a cervical magnetic resonance imaging (MRI) scan showed minimal canal narrowing at C5-6 and evidence of a nodule in the thyroid.

Appellant was referred to Dr. Robert Choi, a specialist in neurology, who related that she developed involuntary shaking movements of her head on September 1, 2006. She had a hyperkinetic movement disorder but he was not certain as to the cause. Dr. Choi stated that appellant's use of Percocet could be having an unusual side effect and he advised her to discontinue its use.

In a report dated October 9, 2006, Dr. Choi stated that appellant had been taking Klonopin for her head tremors; however, this had not ameliorated her condition. Appellant continued to have head-bobbing movements with some tremors in both arms, especially the right side. Dr. Choi was not sure whether she had an unclassified hyperkinetic movement disorder or possibly a psychogenic hyperkinetic movement disorder.

In an October 24, 2006 report, Dr. Matthew Brodsky, a movement disorder physician, stated that appellant had signs of a psychogenic tremor. He advised that the tremor was easily distractible, varied considerably in frequency and amplitude, and was occasionally not present at all. Dr. Brodsky opined that none of appellant's symptoms were consistent with essential tremor or another organic neurologic disease. He also advised that she did not have any neurodegenerative disease.

Appellant submitted (Forms CA-7) requesting wage loss for intermittent disability from September 23, 2006 to August 8, 2007.

By decisions dated May 7, June 14 and August 8, 2007, the Office denied appellant's claims for wage-loss compensation. It found that she did not submit sufficient medical evidence to support that she was disabled due to her accepted cervical conditions for the dates claimed.

On March 14, 2008 the Office found that there was a conflict in medical opinion regarding whether appellant sustained intermittent disability as a result of her accepted cervical conditions. It also found a conflict regarding whether her hyperkinetic tremor was causally related to her June 1, 2006 employment injury. In order to resolve the conflicts, the Office referred appellant, the

medical record and the statement of accepted facts, to Dr. Timothy R. Borman, Board-certified in orthopedic surgery, for an impartial medical examination.

In a report dated May 7, 2008, Dr. Borman provided findings on examination, reviewed the medical evidence and statement of accepted facts. He found that appellant's cervical strain and displacement of cervical intervertebral disc at C5-6 without myelopathy had resolved. Dr. Borman noted that a June 21, 2006 cervical MRI scan showed a disc osteophyte complex at C5-6 in combination with a focal central disc protrusion. He stated, however, that there was no neurologic compromise of the cervical nerve roots or the spinal cord.

Dr. Borman advised that appellant did not present a valid physical examination with objective evidence of an active cervical disc injury. Appellant had a severely limited cervical spine range of motion that was totally nonphysiologic and her balance difficulties and gait abnormalities were unrelated to the June 1, 2006 work incident. Dr. Borman advised that if her disc problem actually had progressed causing spinal cord dysfunction, other findings would be present such as a change in reflexes, reliable sensory deficits and/or loss of muscle strength. These findings were not present in either the examination or the medical records. He stated that there was no spinal cord impingement, peripheral nerve entrapment, or musculoskeletal findings to explain appellant's tremors or head bobbing, such that these symptoms had a psychogenic etiology.

Dr. Borman opined that the June 1, 2006 employment injury disabled appellant from September 27, 2006 to August 8, 2007, but only because of the psychogenic aspect of her condition. He characterized her psychogenic disability as "hysterical" behavior. Appellant was not capable of returning to her regular duty as a letter carrier without restrictions, but based upon a reasonable degree of medical certainty, Dr. Borman could not relate her psycho-emotional impairment to the June 1, 2006 work incident. Dr. Borman advised that she had significant psycho-emotional conditions which were severely impacting her activities of daily living and were leading to near-complete disability in terms of returning to any type of work activity. Appellant's tremor and head bobbing were not related to her cervical spine attributable to a physiological neurological condition. Dr. Borman concluded that any relationship between her cervical spine condition and her apparent abnormal behavior, would be based on a psychiatric condition, not a neurological condition. He noted that with a symptomatic disc injury of the cervical spine, some restriction in physical activity could be expected.

In a July 22, 2008 supplemental report, Dr. Borman reiterated that appellant's accepted conditions became medically stationary and stable as of June 16, 2007 when she returned to work. At that time appellant reached the maximum medical improvement regarding the accepted conditions and that her conditions would not be expected to improve with the passage of time or with further medical treatment.

Dr. Borman opined that the June 1, 2006 work incident did not permanently exacerbate appellant's C5-6 degenerative disc disease. At most, appellant temporarily exacerbated the, C5-6 degenerative disc disease and that any symptoms from this injury resolved by June 16, 2007, when she returned to work. Therefore, no further work restrictions after June 16, 2007 would be related to the June 1, 2006 employment injury. Dr. Borman concluded that appellant's inability to work after returning to work on June 16, 2007 was due to her psychogenic condition and her medical treatment after that date was for factors unrelated to the work event.

By decision dated August 20, 2008, the Office affirmed the May 7, June 14 and August 8, 2007 decisions. It found that Dr. Borman's referee medical opinion established that appellant's accepted cervical conditions had resolved and that her head tremor was not related to the accepted June 1, 2006 injury. Appellant's current physical restrictions were not related to the June 2006 work injury and the periods of intermittent disability claimed after June 16, 2007 were not related to her accepted conditions.

Appellant submitted additional medical reports, most of which were previously of record.

In a report dated June 12, 2006, Dr. Leslie A. Pliskin, Board-certified in family medicine and emergency medicine, related that appellant had apparently injured her thoracic spine while opening a mailbox awkwardly on June 1, 2006. He noted that she was undergoing chiropractic treatment to ameliorate this condition. Dr. Pliskin advised she had sustained a work-related thoracic strain. He advised that appellant could continue on light duty.

In a report dated September 22, 2006, Dr. David Strutin, Board-certified in internal medicine, stated that appellant had pain at the base of her neck, a sensation which she likened to muscle spasms. Appellant also experienced headaches. Dr. Strutin advised that her cervical spine MRI scan showed only minimal central canal narrowing at C5-6 and that nerve conduction studies were nondiagnostic. The diagnostic studies did not show any significant or acute radiculopathy. Dr. Strutin was unable to examine appellant properly because of her head and neck movements in a bobbing and rocking kind of motion. He noted that she had a general tremor of her entire right upper extremity. Dr. Strutin diagnosed a movement disorder which he did not consider to be related to the cervical injury.

In an October 9, 2006 report, Dr. Strutin stated that appellant was still struggling with a movement disorder which remained undefined. On October 16, 2006 he listed her head tremor and that she was unable to return to work. The head tremor remained undiagnosed.

Dr. K. Annette Weller, Board-certified in physical medicine and rehabilitation, submitted reports from 2008 to 2009. On August 18, 2008 she stated that she had treated appellant since December 2007 for ongoing symptoms related to her cervical disc herniation. Appellant had secondary problems including head tremors, which were related to a possible dysreflexic component. Due to her increased weakness and pain, she obtained a cervical spine MRI scan on March 28, 2008. The results showed increased disc protrusion at the C5-6 level. Dr. Weller opined that the increased size of the central and right paracentral disc protrusion, explained the worsening of appellant's symptoms, including increased neck tremor and weakness in the right upper extremity. There was some reduced sensation in the right upper extremity and significantly reduced cervical range of motion. Due to her condition appellant had not been able to work since February 7, 2008. Dr. Weller submitted follow-up reports which addressed the progress of appellant's conditions and essentially reiterated her findings and conclusions.

By letter dated August 21, 2009, counsel requested reconsideration. He argued that Dr. Borman's opinion lacked probative value and did merit special weight. Counsel submitted reports of Dr. Weller subsequent to Dr. Borman's May 7 and July 22, 2008 reports. He contended

that appellant's condition had worsened since Dr. Borman had examined her and that his opinion was no longer valid.²

By decision dated September 25, 2009, the Office denied appellant's application for review on the grounds that he did not raise a substantive legal question or include 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 submitting relevant and pertinent evidence not previously considered by the Office.³ Evidence that repeats or duplicates evidence already of record has no evidentiary value and 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; she has not advanced a relevant legal argument not previously considered by the Office; or submitted relevant and pertinent evidence not previously considered by the Office. The evidence she submitted on reconsideration consisted primarily of medical reports previously of record and considered by the Office. The Board has held that the submission of evidence which is duplicative of that of record or does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ The underlying issue is whether appellant establish intermitted periods of disability causally related to her accepted cervical conditions. The reports from Drs. Pliskin, Strutin and Weller provided findings regarding her condition but did not address any claimed periods of disability from September 23 2006 to August 8, 2007. On appeal, counsel contended that Dr. Borman's referee opinion lacked the requisite probative value to merit the special weight of medical evidence; however, the Board does not have jurisdiction over the merits of the claim. The January 26, 2009 report of Dr. Weller and the July 30, 2009 MRI scan do not address the relevant issue of appellant's claimed disability in 2006 and 2007. Counsel did not advance a point of law or fact not previously considered. The Board finds that

² The July 30, 2009 cervical MRI scan indicated that appellant had a right posterior paracentral to posterior central disc extrusion of C5-6 with right ventral card compression and mod spinal stenosis. The report stated that the extrusion was a little larger now compared with the cervical MRI scan performed on March 28, 2008 and that her cervical condition had gotten worse.

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

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

the Office did not abuse its discretion in refusing to reopen appellant's claim for further review on the merits.⁶

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ The Board notes that appellant filed an additional, separate claim for a recurrence of disability as of February 6, 2008, which was adjudicated by the Office in several decisions. As such, many of the medical reports in the case file pertain to both claims.