United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 10-1373**
	)	**Issued: February 4, 2011**
DEPARTMENT OF JUSTICE, NATIONAL ADVOCACY CENTER, Columbia, SC, 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 April 22, 2010 appellant filed a timely appeal from a March 25, 2010 decision of the Office of Workers' Compensation Programs denying her request for reconsideration without a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed between the most recent merit decision of the Office dated May 15, 2009 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without a merit review under 5 U.S.C. § 8128(a).

[1] For final adverse Office decisions issued prior to November 19, 2008, a claimant has up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2) (2008). For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e) (2009).

FACTUAL HISTORY

On October 23, 2007 appellant, then a 58-year-old publications programs manager, filed a traumatic injury claim alleging that she sustained low back pain on October 22, 2007 as a result of lifting and carrying boxes. She stopped working on October 25, 2007 and returned five days later. Although the Office received the claim in 2007, no formal action was taken by the Office until April 6, 2009 when the Office informed appellant that the evidence submitted was insufficient to establish her claim and advised her about the evidence needed to establish her claim.

An October 25, 2007 Form CA-16 issued by the employing establishment and completed by Carlotta M. Davis, a nurse practitioner, noted that appellant complained of low back pain due to lifting boxes at the workplace and denied any history of a similar injury. The nurse diagnosed low back pain based on a lumbar spine x-ray and checked "yes" in response to a form question asking whether appellant's condition was caused or aggravated by her employment and referred appellant to a chiropractor. She advised in an October 25, 2007 work release that appellant could return to modified duty on November 1, 2007.

Appellant submitted an October 25, 2007 note signed by the nurse practitioner for physical therapy and receipts of physical therapy treatments from October 25, 2007 through April 8, 2008.

An October 25, 2007 evaluation from Dr. James Gettys, a Board-certified diagnostic radiologist, found mild narrowing of appellant's L5-S1 disc space. A March 10, 2008 magnetic resonance imaging report by Dr. Robin Daum-Kowalski, a Board-certified diagnostic radiologist, revealed a central and slightly left paracentral disc protrusion of the L5-S1.

A nurse practitioner's March 10, 2008 report noted that appellant complained of low back pain beginning two months earlier when she lifted heavy boxes and diagnosed low back pain. On October 14, 2008 she noted that appellant complained of low back pain radiating to her legs that began two weeks earlier at home. The nurse practitioner diagnosed left sciatica after appellant exhibited restricted range of motion of the back and left hip due to pain and a positive straight leg raise test. Her February 11 and 25, 2009 reports detailed similar symptoms occurring on February 6, 2009 and diagnosed low back pain, intervertebral disc protrusion and radicular pain.

A February 25, 2009 report from Dr. Randall G. Drye, a neurosurgeon, indicated that appellant had a spontaneous onset of hip, back, buttocks and leg pain on February 6, 2009. Appellant stated that she had no prior history of significant back or leg difficulties before February 6, 2009. Dr. Drye examined her and observed pain on flexion at the waist, a positive straight leg raise result and tenderness to palpation over the L5-S1 region, particularly over the left sciatic notch. He diagnosed "incomplete" left S1 radiculopathy and corresponding L5-S1 disc herniation.

In a March 6, 2009 report, Dr. Eva Jane Rawl, a Board-certified anesthesiologist, advised that appellant presented low back pain radiating down her left lower extremity to the ankle since

February 6, 2009. She examined her, observed a slightly antalgic gait sympathetic to the left and recommended an L5-S1 epidural.[2]

By decision dated May 15, 2009, the Office denied appellant's claim, finding that the medical evidence did not establish that the October 22, 2007 lifting incident caused her claimed low back condition.

Appellant requested reconsideration on March 13, 2010. She submitted copies of the nurse practitioner's March 10, 2008 and February 11, 2009 reports and a notarized August 15, 2009 statement from her supervisor, detailing that she injured her back at work while preparing booking shipments in October 2007. The supervisor added that appellant retired in April 2009.

By decision dated March 25, 2010, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant review of the May 15, 2009 decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office's regulations provide that the evidence or argument submitted by a claimant must either: (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.[4] Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

ANALYSIS

The Office's May 15, 2009 merit decision denied appellant's claim on the grounds that the medical evidence did not establish that her claimed low back condition was causally related to the October 22, 2007 lifting incident. Appellant requested reconsideration on March 13, 2010 and submitted her supervisor's August 15, 2009 statement who noted appellant's duties and attributed her injury to her employment. This statement neither showed that the Office

[2] Appellant also offered numerous medical records for the period November 14, 2007 to April 15, 2009 related to other conditions, including breast cancer, hypertension, hypothyroidism, hyperlipidemia, hypercholesterolemia and urinary tract infection. None of these conditions are at issue in this case.

[3] 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

[4] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

[5] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by the Office.[6]

Appellant also submitted a nurse practitioner's March 10, 2008 and February 11, 2009 reports. As a nurse practitioner is not a physician under the Act, these reports cannot be considered as competent medical evidence by the Board.[7] As the underlying issue is medical in nature, reports from a nurse practitioner do not constitute relevant evidence. Furthermore, copies of these reports were already received by the Office well before issuance of its May 15, 2009 merit decision. 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.[8]

Because appellant did not show 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 new evidence, she is not entitled to a review of the merits of her claim.

On appeal, appellant argues that her low back injury was due to lifting heavy boxes of books in the performance of her employment duties, she supplied her entire medical record and the nurse practitioner's February 11 and March 10, 2008 reports should have been reviewed since she was assured by the nurse practitioner that they were "considered" signed by the supervising physician. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). The Act defines physician as: "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."[9] The nurse practitioner's reports bore no such signature. As discussed above, the evidence did not warrant a further review of the merits under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[6] Moreover, as causal relationship is a medical issue, appellant's supervisor is not qualified to give his opinion on that matter. *See I.J.*, 59 ECAB 408, 415 (2008); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[7] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004).

[8] *Edward W. Malaniak*, 51 ECAB 279 (2000).

[9] *Vickey C. Randall*, 51 ECAB 357 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2011
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