United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 10-1479**
	)	**Issued: February 16, 2011**
DEPARTMENT OF AGRICULTURE, SANTA FE NATIONAL FOREST, Santa Fe, NM, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2010 appellant filed a timely appeal from a November 9, 2009 nonmerit decision of the Office of Workers' Compensation Programs. Because more than one year elapsed between the last merit decision dated October 9, 2008 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.[1]

ISSUE

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

[1] For Office decisions issued prior to November 19, 2008, a claimant had up to 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).

FACTUAL HISTORY

Appellant, a 36-year-old swamper, injured his right knee on July 8, 1998 while moving a small tree. The Office accepted his claim for tears of the right anterior cruciate ligament, medial meniscus and lateral meniscus and anterior cruciate instability.

By letter dated March 10, 2005, the Office advised appellant that it was scheduling a second opinion medical examination to determine his current condition. It informed him of his rights and responsibilities under section 8123 of the Federal Employees' Compensation Act to attend the scheduled examination.[2]

On March 18, 2005 appellant received a letter from the office of Dr. William K. Jones, which informed him that the Office had scheduled a second opinion medical appointment for April 4, 2005. It requested that he bring a photo identification card to the examination. On March 22, 2005 Dr. Jones' office informed appellant that it had rescheduled his appointment for April 7, 2005. Appellant subsequently telephoned the Office on March 30, 2005 and requested that his appointment with Dr. Jones be rescheduled because he needed to obtain copies of his x-ray films in time for his appointment.

By letter dated March 31, 2005, Dr. Jones' office informed appellant that it had rescheduled his appointment for April 26, 2005. It again advised appellant that he needed to bring a photo identification card to the examination. Appellant informed Dr. Jones' office on April 21, 2005 that he was not going to attend the examination. The record contains a copy of an April 21, 2008 e-mail from Dr. Jones' office to the Office which states, "[Appellant] is scheduled for his [second opinion] evaluation with Dr. Jones on April 26, 2005. [He] called and stated that he is not going to attend his appointment and will write to his congressman. [Appellant] stated [that] he is not going to waste anybody's time." He did not appear at the April 26, 2005 examination as scheduled.

On April 26, 2005 the Office issued a proposed notice of suspension of compensation benefits due to appellant's obstruction of a scheduled medical examination. It advised him that he had 14 days to provide a valid reason for failing to submit to or cooperate with the scheduled examination. If appellant did not show good cause for his failure to attend the examination, his entitlement to compensation would be suspended under 5 U.S.C. § 8123(d) of the Act until such time he attended another scheduled examination.

In an May 11, 2005 decision, the Office suspended appellant's compensation benefits due to his obstruction of a scheduled medical examination.

In a copy of a May 10, 2005 letter to his congressional representative, received by the Office on May 19, 2005, appellant indicated that he did not want to have his compensation suspended and would attend a second opinion examination, despite the fact that he considered it a waste of taxpayers' money. He claimed he was permanently disabled due to his accepted knee condition and would only attend a second opinion examination if the chosen physician was recommended by his treating physician. Appellant also asserted that he did not attend the

[2] 5 U.S.C. § 8123(d).

April 26, 2005 examination because his driver's license had been suspended and he lacked the necessary photo identification.

In a June 29, 2005 telephone call, the Office informed appellant that it would reinstate his compensation benefits if he submitted a written statement that he would attend a medical examination and did, in fact, attend the scheduled examination.

By letter dated August 12, 2005, appellant requested reconsideration. He stated that he did not attend the April 26, 2005 examination because Dr. Jones' assistant told him he needed to provide a New Mexico driver's license, an identification card or a military identification card when he appeared at the examination. Appellant stated that his New Mexico driver's license had been suspended and that he needed time to acquire a new form of identification. He stated that his May 10, 2005 letter to the Office explained why he did not attend the April 26, 2005 examination.

By decision dated October 13, 2005, the Office denied appellant's application for review on the ground that it did not raise any substantive legal questions or included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated January 4, 2006, appellant informed the Office that he had obtained a New Mexico identification card on December 30, 2005 and wished to schedule another second opinion medical examination. The Office subsequently scheduled a second opinion examination with Dr. Robert L. Gossheim, Board-certified in orthopedic surgery, for April 24, 2006. Appellant appeared for this examination. The Office reinstated his compensation benefits effective January 14, 2006.

By decision dated May 16, 2006, the Office denied appellant wage-loss compensation for the period April 17, 2005 to January 13, 2006. It found that he was not entitled to compensation for this period because he failed to attend his scheduled medical appointments.

By letter dated September 21, 2006, appellant requested reconsideration.

By decision dated May 24, 2007, the Office found that the May 16, 2006 decision was issued in error as appellant had not filed a claim for compensation benefits. It reviewed the record and found that the period of obstruction began on April 26, 2005, the date he failed to attend the scheduled examination. The Office paid appellant compensation from April 17 to 25, 2005. It found that he was not entitled to compensation from April 26, 2005 to January 4, 2006, the date he argued to another second opinion examination.

By letter dated May 10, 2008, appellant requested reconsideration. He asserted that he responded to the Office's April 26, 2005 notice of suspension within 14 days and was therefore entitled to reimbursement of the compensation forfeited from April 26, 2005 to January 4, 2006.

By decision dated October 9, 2008, the Office denied modification of the May 24, 2007 decision.

By letter dated October 9, 2009, appellant requested reconsideration. He attached a copy of his passport, issued October 4, 2004 and asserted that his compensation should be reinstated

as of June 26, 2005, the date he spoke to the Office *via* telephone about ending the suspension of his compensation benefits. Appellant contended that, had the Office told him that a passport constituted sufficient identification, he would have immediately asked the Office to schedule another medical examination. He maintained that his compensation should be reinstated as of June 26, 2005.

By decision dated November 9, 2009, the Office denied appellant's application for review on the grounds that it did not raise a substantive legal question or include new and relevant evidence sufficient to warrant further merit review.

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 in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4]

ANALYSIS

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law; did not advance a relevant legal argument not previously considered by the Office; and did not submit relevant and pertinent evidence not previously considered. The evidence submitted is not pertinent to the issue on which his claim was denied. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[5]

Appellant submitted a copy of his passport, with his October 9, 2009 reconsideration request. He argued that, since he had a the passport when he spoke with the Office on June 29, 2005, his compensation should have been reinstated on that date as it was a valid form of identification to take to the scheduled medical examination. Appellant was informed by Dr. Jones' office in March 2005 that he was required to bring a valid form of photo identification with him to the examination. He asserted that he was informed that a New Mexico drivers' license, New Mexico identification card or military identification card were sufficient identification. Appellant did not address why a valid United States passport was not sufficient for this purpose. The reason provided for rescheduling the April 7, 2005 examination was that he wanted more time to obtain copies of his x-rays films in time for his appointment. The April 21, 2005 e-mail from the office of Dr. Jones indicated that appellant refused to attend the April 26, 2005 examination because he did not want to waste anyone's time.

[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).

Appellant's reconsideration request did not provide any new or relevant evidence for the Office to review. His arguments that are cumulative and repetitive of those raised and previously considered by the Office. Appellant's reconsideration request failed to show that 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. The Office did not abuse its discretion in refusing to reopen his claim for a review on the merits.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 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