

**United States Department of Labor
Employees' Compensation Appeals Board**

T.K., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Hyattsville, MD, Employer**

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**Docket No. 10-579
Issued: January 14, 2011**

Appearances:
Appellant, pro se
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 December 28, 2009 appellant filed a timely appeal of a December 17, 2009 nonmerit decision of the Office of Workers' Compensation Programs that denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. As the last merit decision of the Office was issued on March 18, 2009, over 180 days before the date of this appeal, the Board lacks jurisdiction to review the merits of this case.¹

¹ An appeal of an adverse Office decision issued on and after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).²

On appeal, appellant contends that the Office improperly terminated her compensation benefits and denied wage-loss compensation from October 10, 2007 to present, did not consider whether the job offer she received was suitable or addressed her emotional condition.

FACTUAL HISTORY

On December 9, 2003 appellant, then a 28-year-old human services specialist, fell in a bathroom stall. On October 5, 2005 the Office accepted her claim for contusion of back and sprain/strain of right knee/leg. Appellant returned to work for the employing establishment on September 20, 2007 at which point her compensation stopped.³

On November 22, 2007 appellant filed a claim for compensation for wage loss from October 10 through 31, 2007.⁴

By decision dated March 18, 2009, the Office denied appellant's claim for compensation from October 10 through 31, 2007. It found that the medical evidence did not establish that the claimed disability was related to the accepted work-related factors.

By letter dated April 3, 2009, received by the Office on April 22, 2009, appellant requested an oral hearing.

In a decision dated May 26, 2009, the Office denied appellant's request for an oral hearing as untimely.

On October 26, 2009 appellant requested reconsideration of the March 18, 2009 decision. She contended that she had an aggravation of stress, depression, anxiety, panic and migraine headaches due to her December 9, 2003 employment injury. Appellant contended that she was disabled since September 20, 2007 and that her benefits were improperly terminated. She submitted documents previously of record, including an October 13, 2007 request for accommodation from Pearl E. Pfuhl, Ph.D.; an October 16, 2007 report by Dr. Pfuhl; a December 3, 2007 work capacity evaluation by Dr. Pfuhl; a December 10, 2007 facsimile from Doctor's Community Hospital; discharge instructions from Bowie Health Center dated October 23, 2008 and a December 18, 2008 work capacity evaluation by Dr. Mark J. Smith, a

² By order dated November 10, 2010, the Board denied appellant's request for an oral argument. Docket No. 10-579 (issued November 10, 2010).

³ Appellant alleged that she returned to work on September 20, 2007 because she was told she would not have a job if she did not return to work within 30 days from August 20, 2007 pursuant to a settlement agreement she signed on August 21, 2007.

⁴ On October 31, 2007 appellant filed a time analysis form indicating that she was absent without leave due to her injury on the following dates: October 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31, 2007.

Board-certified psychiatrist. Additional new evidence included an October 27, 2009 report from by Dr. Smith, noting that appellant had been under his care since September 23, 2008 for panic disorder due to work-related stress. Dr. Smith noted that her December 9, 2003 work injury aggravated her preexisting depression, anxiety/panic and cluster headaches and that she was disabled since September 20, 2007. Appellant also submitted copies of prescriptions.

By decision dated December 17, 2009, the Office denied appellant's request for reconsideration without conducting further a merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office 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.⁶ 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.⁷ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

The Office accepted appellant's claim for contusion of back and sprain of her right knee and leg. Appellant returned to work on September 20, 2007, but stopped work shortly thereafter. She filed a claim for compensation from October 10 through 31, 2007. The Office denied this claim for compensation by decision dated March 18, 2009. It then denied appellant's request for reconsideration.

Appellant alleged that the Office improperly terminated her benefits, did not review the suitability of her job or consider her emotional condition. The Board's jurisdiction on appeal is limited to whether the Office properly denied reconsideration of the merits on December 17, 2009. The merits of March 18, 2009 decision are not presently before the Board in this appeal.

Appellant did not argue that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office. Much of the evidence submitted was duplicative of that already of record and previously considered by the

⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at 10.608(b).

⁸ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Office. Duplicative evidence does not warrant reopening a case for further merit review.⁹ The Board notes that appellant's claim for compensation was denied as she had not established by probative medical evidence that she was disabled from October 10 through 31, 2007 causally related to her accepted contusion of the back or sprain/strain of right knee/leg. The new evidence submitted addressed appellant's emotional condition, which is not an accepted condition in this claim. The October 27, 2009 report of Dr. Smith does not address whether her accepted conditions caused her absence from work from October 10 through 31, 2007. The Board has held that where the evidence does not address the particular issue involved in the underlying case a merit review is not warranted.¹⁰

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.¹¹

CONCLUSION

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

⁹ See *L.H.*, 59 ECAB 253 (2007); *James E. Noris*, 52 ECAB 93 (2000).

¹⁰ *K.H.*, 59 ECAB 495 (2008).

¹¹ *M.E.*, 58 ECAB 694 (2007) (when an 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 without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2009 is affirmed.

Issued: January 14, 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