United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 10-1158**
	)	**Issued: January 18, 2011**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, GA, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 29, 2009 nonmerit decision denying reconsideration. The last merit decision of the Office was a September 2, 2009 decision denying his occupational disease claim. Because more than 180 days elapsed between the most recent merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On January 25, 2007 appellant, then a 58-year-old aircraft sheet metal mechanic leader, filed an occupational disease claim alleging pain in his hip on July 18, 2005 while lifting and tilting a 75-pound crew door. He indicated that the injury had aggravated an April 29, 1988 back

injury under case number xxxxx816. Appellant first sought treatment and realized his current condition was related to his work on July 25, 2005. He also filed a recurrence claim under case number xxxxxx802, date of injury July 18, 2005, but the case was denied.[1]

By decision dated March 22, 2007, the Office denied the claim finding that the factual evidence was insufficient to establish that the claimed incident occurred as alleged.

On April 17, 2007 appellant requested reconsideration. In an undated statement, he described his injury, submitted medical reports dated July 25 and August 24, 2005 and May 14, 2006 from Dr. P. Jeffrey Jarrett, a Board-certified orthopedic surgeon, medical reports dated May 21, 1990 and October 15, 1993 from Dr. Kim W. Johnston, a Board-certified neurosurgeon and a July 25, 2005 radiology report.

By decision dated June 22, 2007, the Office modified the prior decision to find that the implicated employment factors were established but found that the medical evidence did not establish that the claimed condition was causally related to employment factors.

On April 7, 2008 appellant requested reconsideration. He submitted December 10, 2007 and January 15, 2008 reports from Dr. Jarrett.

By decision dated June 27, 2008, the Office denied modification of its prior decision.

On February 17, 2009 appellant requested reconsideration and submitted medical reports from Dr. Jarrett dated March 26, 2006 to October 6, 2008. He also submitted a December 20, 2007 magnetic resonance imaging report.

By decision dated April 27, 2009, the Office denied modification of the June 27, 2008 decision.

On July 31, 2009 appellant requested reconsideration. In a June 18, 2009 report, Dr. Jarrett advised that he had treated appellant for many years for intermittent symptomatic lumbar disc disease with left-sided radiculopathy. When he examined appellant on July 25, 2005, the pain was coming from appellant's back not the left hip. Dr. Jarrett stated that imaging demonstrated evidence of multilevel lumbar disc disease, which he believed accounted for appellant's symptoms. He also noted that, during the examination, appellant had reported that on July 18, 2005 he was awkwardly lifting a C130 crew door which weighed approximately 75 pounds and that was when his symptoms started. Dr. Jarrett noted that appellant also reported being treated for a previous lumbar injury in 1988. Appellant reported that, since the 1988 injury, he only experienced occasional back pain which he attributed to the 1988 injury. Dr. Jarrett stated, "[a]lthough it is not reasonable for me to say that the lifting of the C130 crew door is the sole basis of [appellant's] lumbar condition, it is, however, my professional medical opinion that his clinical findings are consistent with an aggravation of his previous injury."

[1] The Office indicated that claim number xxxxxx816 was accepted for a lumbar strain and herniated nucleus pulpous L5-S1 and the claim was closed after all appropriate benefits were paid. The claim was not accepted for a degenerative condition. In claim number xxxxxxx802, the Office found that the medical evidence did not establish a causal relationship between the new work injury and the diagnosed condition. Claim number xxxxxx816 is not presently before the Board.

By decision dated September 2, 2009, the Office denied modification of its prior decision as causal relationship was not established.

On December 14, 2009 appellant again requested reconsideration. In a December 9, 2009 report, Dr. Jarrett noted his treatment of appellant's lumbar condition and repeated his opinion on causal relation to a reasonable degree of medical certainty."

By decision dated December 29, 2009, the Office denied appellant's request for reconsideration of the merits as he had not submitted any new and relevant evidence or argument with his request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation 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 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]

ANALYSIS

Appellant's December 14, 2009 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

Appellant did not submit relevant and pertinent new evidence not previously considered by the Office. While Dr. Jarrett's December 9, 2009 report is new, it is not relevant as the physician's opinion on causal relationship reiterated that in his June 18, 2009 report. The Office previously considered his opinion in the September 2, 2009 decision. Therefore, Dr. Jarrett's

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

[3] 20 C.F.R. § 10.606(b)(2). *See R.B.*, 61 ECAB ___ (Docket No. 09-1241, issued January 14, 2010); *Susan A. Filkins*, 57 ECAB 630 (2006).

[4] 20 C.F.R. § 10.607(a). *See S.J.*, 60 ECAB ___ (Docket No. 08-2048, issued July 9, 2009); *D'Wayne Avila*, 57 ECAB 642 (2006).

[5] 20 C.F.R. § 10.608(b). *See R.M.*, 59 ECAB 690 (2008); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

opinion is cumulative and duplicative. It does not constitute a basis for reopening the case for a merit review.[6]

On appeal, appellant takes issue with the denial of his claim and asserts that the evidence is sufficient evidence to warrant acceptance of the claim. As noted, the Board does not have jurisdiction over the merits of this case. For the reasons stated above, the Office properly denied appellant's request for merit review.

CONCLUSION

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 20 C.F.R. § 10.606(b)(2) and properly denied his December 14, 2009 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

[6] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).