

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

J.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 10-1819
Issued: March 16, 2011**

Appearances:
Houston Ford, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2010 appellant filed a timely appeal from June 8, 2010 nonmerit decision of the Office of Workers' Compensation Programs' denying her request for merit review. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision. The last merit decision of the Office was its April 20, 2006 decision denying appellant's claim for wage-loss benefits. The Board lacks jurisdiction to review the merits of this claim.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

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

FACTUAL HISTORY

Appellant's October 21, 1996 occupational disease claim was accepted for bilateral carpal tunnel syndrome (CTS) and bilateral trigger thumbs and attendant surgeries.³ She stopped working in December 2004.

On April 28, 2004 the Office terminated appellant's compensation benefits on the grounds that she was capable of returning to her date-of-injury position as a mail handler. On September 20, 2004 an Office hearing representative vacated the termination decision and remanded the case for development of the medical evidence. On June 16, 2006 the Office again terminated appellant's compensation benefits. In a decision dated August 9, 2006, an Office hearing representative vacated the June 16, 2006 termination decision and remanded the case for a second opinion examination.

On December 11, 2006 the Office again terminated appellant's compensation benefits, based upon the report of Dr. Edward Prostic, a Board-certified orthopedic surgeon, who opined that although she was partially disabled due to nonemployment-related conditions, she was able to return to full duty with respect to her accepted conditions. On July 3, 2007 an Office hearing representative affirmed the December 11, 2006 decision.

In support of a May 2, 2008 request for reconsideration, appellant submitted an April 18, 2008 report from Dr. James Stuckmeyer, a Board-certified orthopedic surgeon, who provided examination findings and opined that her diagnosed bilateral CTS and bilateral trigger thumb developed as a result of her repetitive work activities. Dr. Stuckmeyer also opined that any attempt to return to regular duty would result in an aggravation of her neurological symptoms. Accordingly, he recommended work restrictions of no repetitive pushing, pulling, lifting or reaching and no repetitive pinching or grasping and no lifting greater than 5 to 10 pounds on an occasional basis. In an August 8, 2008 decision, the Office denied modification of its prior decision, noting that Dr. Stuckmeyer's restrictions were prophylactic in nature.

In support of an August 6, 2009 reconsideration request, appellant submitted additional medical evidence, including an August 1, 2009 report from Dr. Stuckmeyer, who provided a detailed factual and medical history. Noting that her condition had improved since she stopped working in 2004, he reiterated his recommended restrictions, which he opined were necessary to prevent the recurrence of her neurological symptoms.

In a September 29, 2009 decision, the Office denied modification of the decision terminating appellant's compensation benefits.⁴ It found that Dr. Stuckmeyer's report did not establish her inability to perform the mail handler position.

³ The Office denied appellant's 1995 emotional condition claim (File No. xxxxxx680). File No. xxxxxx680 was combined with the instant claim, which serves as the master file.

⁴ The Office modified its prior decision to state that the correct issue for determination was whether appellant submitted new and relevant evidence sufficient to warrant modification of the decision terminating her compensation benefits pertaining to the accepted June 4, 1996 injury. It noted that although the issue in the August 8, 2008 decision was incorrectly stated as to whether a schedule award decision should be modified, the discussion of evidence and basis of the decision correctly addressed the termination issue.

In a letter dated March 12, 2010, appellant, through her representative, requested reconsideration. Counsel noted that he was submitting a narrative report from Dr. Stuckmeyer, which he contended was relevant and germane to the issue before the Office and warranted modification of the termination decision.

In a February 22, 2010 report, Dr. Stuckmeyer reviewed the conclusions and recommendations contained in his prior reports. He cited his previous observation that, on any attempt to return to a regular duty status, appellant's neurological symptoms recurred. Dr. Stuckmeyer noted that he had recommended work restrictions of no repetitive pulling, lifting or reaching; no repetitive pinching or grasping; and no lifting greater than 5 to 10 pounds on an occasional basis. He described how the condition of CTS occurs and the possible causes for the condition. Dr. Stuckmeyer reiterated his belief that the cause of appellant's condition was the repetitive stresses associated with her occupational duties and opined that if she were to return to those duties she would very soon be unable to perform those duties again.

By decision dated June 8, 2010, the Office denied appellant's request for reconsideration, finding that the evidence presented was insufficient to warrant a merit review.

On appeal, counsel contends that Dr. Stuckmeyer has addressed all relevant issues and that his reports are sufficient to warrant merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the 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 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.⁷ 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.⁸ 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.⁹

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 § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ANALYSIS

The Board finds that the Office properly denied appellant's request for further merit review.

In the March 12, 2010 request for reconsideration, appellant's representative noted that he was submitting a narrative report from Dr. Stuckmeyer, which he contended was relevant and germane to the issue before the Office and warranted modification of the termination decision. He did not, however, allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant's representative 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 her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted a February 22, 2010 medical report from Dr. Stuckmeyer, who reviewed the conclusions and recommendations contained in his prior reports. Dr. Stuckmeyer cited his previous observation that, on any attempt to return to a regular duty status, appellant's neurological symptoms recurred. He noted that he had recommended work restrictions of no repetitive pulling, lifting or reaching; no repetitive pinching or grasping; and no lifting greater than 5 to 10 pounds on an occasional basis. Dr. Stuckmeyer described the development and possible causes of the CTS. He reiterated his belief that, in appellant's case, the condition was due to the repetitive stresses associated with appellant's occupational duties and opined that, if she resumed her position as a mail handler, she would very soon be unable to perform those duties.

The Board finds that Dr. Stuckmeyer's February 22, 2010 report does not constitute relevant and pertinent new evidence not previously considered by the Office¹⁰ As the issue for determination is whether appellant was able to perform the duties of her date-of-injury job, Dr. Stuckmeyer's opinion on the cause of her accepted CTS condition was irrelevant. Additionally, Dr. Stuckmeyer's report merely repeats information contained in reports previously received and considered by the Office and is, therefore, cumulative and duplicative in nature.¹¹ Accordingly, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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

On appeal, counsel contends that Dr. Stuckmeyer addressed all relevant issues and that his reports are sufficient to warrant merit review. For reasons stated the Board finds that the evidence submitted in support of appellant's request for reconsideration is insufficient to warrant further merit review.

¹⁰ See *Susan A. Filkins*, 57 ECAB 630 (2006).

¹¹ 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).

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).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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