

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

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V.H., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
SOUTHERN OREGON REHABILITATION )  
CENTER & CLINICS, White City, OR, )  
Employer )

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**Docket No. 10-1846  
Issued: March 8, 2011**

*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 July 7, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' nonmerit decision dated June 10, 2010. The last merit decision in this case was issued by the Board on May 18, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

This case has previously been before the Board. On February 3, 2007 appellant, a 48-year-old nursing assistant, injured her low back when she tripped and fell. The Office accepted her claim for a back contusion and sacroiliac strain. On April 27, 2007 appellant filed a Form

CA-7 claim for compensation, from March 20 to April 28, 2007. By decision dated June 18, 2007, the Office denied her claim, finding that the medical evidence did not establish that she was disabled for the period claimed. Appellant filed claims for compensation from April 29 through June 29, 2007. She submitted a July 27, 2007 report from Dr. Thomas J. Purtzer, Board-certified in neurosurgery, who noted that she had fallen at work on February 3, 2007 while pushing a laundry cart and was disabled from work due to low back and neck pain. By decision dated August 28, 2007, the Office denied appellant's claim for compensation for the period April 29 through June 29, 2007. On November 12, 2007 appellant requested reconsideration and submitted a November 25, 2007 report from Dr. Purtzer, who stated that she was unable to perform her usual job because of low back pain with standing, walking, bending or lifting. By decision dated February 11, 2008, the Office denied modification of its June 18 and August 28, 2007 decisions. On February 15, 2008 appellant requested reconsideration. By nonmerit decisions dated April 9 and June 5, 2008, the Office denied appellant's requests for reconsideration, finding the evidence submitted was irrelevant and insufficient to warrant further merit review.

In a May 18, 2009 decision,<sup>1</sup> the Board affirmed the Office's August 28, 2007 decision finding that the medical evidence did not address the period of disability claimed from March 20 to June 29, 2007. The Board also found that the Office properly denied her requests for reconsideration under 5 U.S.C. § 8128. The facts of this case are set forth in the Board's May 18, 2009 decision and are incorporated herein by reference.

On May 17, 2010 appellant requested reconsideration. She submitted treatment notes from Dr. Purtzer dated May 14, 2009 to April 14, 2010. Dr. Purtzer noted findings on examination and provided updates on appellant's condition. On March 30, 2010 he reviewed his treatment of appellant, the history of her injury and lumbar x-rays administered on November 22, 2006. The studies showed lumbar scoliosis, instability of the lumbar spine, severe degenerative disc disease at L3-L4, L4-L5 and L5-S1, moderate to severe spondylolisthesis at L3-L4, L4-L5 and L5-S1, Grade 1 retrolisthesis, hypermobility and ligament laxity in the cervical spine and occipital cervical joint dysfunction. Dr. Purtzer reviewed additional x-rays on March 3, 2007 and diagnosed aggravation of preexisting unstable degenerative disease of the cervical and lumbar spine, lumbar scoliosis, spondylolisthesis at L3-L4, L4-L5, L5-S1 and retrolisthesis. He opined that appellant's work accidents caused an aggravation of the underlying disease process, causing it to become active and acute. Dr. Purtzer stated that appellant had a very unstable spine and was susceptible to damage of the spine if subject to external force. He noted that the injuries at work caused trauma from which the normal muscles and back structure were unable to compensate. Dr. Purtzer stated that muscle spasms caused permanent alternation of the structures of the spine, including the intervertebral discs and caused a permanent aggravation of appellant's degenerative disc disease.

By decision dated June 10, 2010, the Office denied appellant's application for review on the grounds that it did not raise substantive legal questions or include new and relevant evidence sufficient to warrant further merit review.

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<sup>1</sup> Docket No. 08-2142 (issued May 18, 2009).

### **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.<sup>2</sup> 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.<sup>3</sup>

### **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 or submit relevant and pertinent evidence not previously considered by the Office. Appellant submitted the March 30, 2010 report of Dr. Purtzer, who reviewed her medical history, stated findings on examination and reiterated his opinion on causal relationship. Dr. Purtzer's opinion was cumulative and repetitive of that stated in his prior reports which the Office considered in its previous decisions. He stated that her work injuries caused a permanent aggravation of her underlying degenerative disc disease. The Board notes this condition was not accepted by the Office as employment related. The underlying claim was accepted for a back contusion and sacroiliac strain and denied specific periods of disability related to these conditions. Dr. Purtzer's report did not present any relevant opinion pertaining to whether appellant was totally disabled from March 20 to April 28, 2007 and from April 29 to June 29, 2007, due to the conditions accepted in this case. 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 appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>2</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>3</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 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