United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 14-1577**
	)	**Issued: November 4, 2014**
SOCIAL SECURITY ADMINISTRATION, Joliet, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2014[1] appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs (OWCP) dated January 2, 2014. As the last merit decision was issued on November 15, 2012, more than 180 days before the filing of this appeal, and pursuant to the Federal Employees' Compensation Act[2] (FECA) and 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 OWCP properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128(a).

[1] This appeal was received by the Board on July 3, 2014. As the date of receipt would render the appeal untimely filed, the date of the postmark was used to establish the date of filing. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 48-year-old field representative, filed a Form CA-2 claim for benefits on November 3, 1999 alleging bilateral trigger thumb, carpal tunnel and de Quervain's syndromes causally related to factors of employment. OWCP accepted the claim for bilateral trigger thumb, right-sided carpal tunnel syndrome and right-sided de Quervain's syndrome. Appellant received compensation through daily and supplemental rolls.[3]

In order to determine whether appellant could return to full duty, OWCP referred him to Dr. Richard Sidell, Board-certified in orthopedic surgery, for a second opinion examination. In a February 2, 2007 report, Dr. Sidell provided findings on examination, reviewed the medical history[4] and the statement of accepted facts. He found that there was no reason why appellant could not function within the limitations of the job description for an eight-hour day. Dr. Sidell stated that he appeared to have some residual scarring or fibrosis in the flexor tendon sheath of both thumbs at the level of the metacarpophalangeal joint. He also had capsular instability with voluntary volar subluxation of the metacarpophalangeal joint, which was a preexisting condition that appellant had throughout his lifetime. Dr. Sidell opined that this condition was probably responsible for all of his current problems.

In a July 2, 2007 report, Dr. Gordon H. Derman, specialist in family practice and appellant's treating physician, stated although he felt Dr. Sidell's opinion was generally satisfactory, he believed that to truly determine appellant's ability to work, he should undergo a more focused functional capacity evaluation, one that addressed his specific work tasks.

By decision dated December 3, 2007, OWCP terminated appellant's compensation, finding that Dr. Sidell's report represented the weight of the medical evidence.[5]

Appellant continued to treat with Dr. Derman. In a progress note dated September 10, 2008, Dr. Derman related that appellant still had thumb pain and remained off work.[6] He also noted that appellant was treated by Dr. Colvin R. Brown, an internist, for his fibromyalgia condition. Appellant requested reconsideration on December 3, 2008.

By decision dated March 11, 2009, OWCP denied modification of the prior decision, finding that the new evidence submitted failed to establish disability due to the accepted conditions.

[3] Appellant had various periods of disability and part-time employment.

[4] Dr. Sidell noted reviewing functional capacity evaluations dated September 9, 2004 and April 10, 2006.

[5] By decision dated April 24, 2008, OWCP found that appellant had abandoned his request for a hearing before the Branch of Hearings and Review. Appellant thereafter requested an appeal before the Board on July 21, 2008, but withdrew his request. This appeal was dismissed pursuant to appellant's request on November 21, 2008.

[6] Appellant remained off work due to a fibromyalgia condition which has not been accepted as employment related.

In a March 11, 2009 progress note, received by OWCP on January 19, 2010, Dr. Derman related that there was still no resolution regarding the issue of a functional capacity evaluation for appellant, therefore his case could not be closed.

On March 2, 2010 appellant requested reconsideration. In support of his request, he submitted medical reports from Dr. Brown, an internist. In a July 3, 2008 report, Dr. Brown related that appellant had fibromyalgia, which was exacerbated by his November 9, 1997 injury. In a January 10, 2010 report, he related that appellant had a history of fibromyalgia and hand osteoarthritis and was doing poorly. On March 2, 2010 OWCP also received a questionnaire completed by Dr. Brown who agreed with appellant's diagnosis of trigger finger of the right thumb and bilateral lateral epicondylitis, as well as fibromyalgia. Dr. Brown did not expect appellant's condition to improve, and he remained totally disabled.

By decision dated May 28, 2010, OWCP denied modification of the prior decision.

On September 8, 2010 Dr. Derman reported that appellant had retired. On examination, appellant showed signs of a trigger of the right small finger, which appellant stated had been a continuous problem and had again worsened. He recommended a steroid injection.

On May 24, 2011 appellant requested reconsideration.

By decision dated August 11, 2011, OWCP denied modification of the May 28, 2010.

In a progress note dated May 11, 2011, received by OWCP on November 28, 2011, Dr. Derman related that there had been no change in appellant's condition. In notes dated September 14, 2011 and January 11, 2012 Dr. Derman reiterated that appellant should undergo a functional capacity evaluation.

In a September 12, 2012 report, received by OWCP on January 7, 2013, Dr. Derman stated that appellant had returned for his disability evaluation and that his right thumb trigger persisted. He recommended that appellant proceed with a functional capacity evaluation which addressed his workplace activities. Dr. Derman advised that he would see appellant again for follow up if these issues were not resolved within a few months. He also submitted a September 12, 2012 Form CA-20 in which he stated that appellant had right-sided trigger thumb and bilateral epicondylitis. Dr. Derman checked a box indicating that the condition found was caused or aggravated by an employment activity.

On November 15, 2012 OWCP reviewed the merits of the claim and denied modification of the prior decision.

OWCP received a September 12, 2012 progress note from Dr. Derman on January 7, 2013. Dr. Derman reiterated that appellant had persistent right thumb trigger and recommended a functional capacity evaluation. On March 6, 2013 he provided appellant with a new thumb brace, but he still complained of pain, but there was no worsening of his condition.

In an April 17, 2013 procedure note Dr. Derman related that appellant's diagnosis was trigger finger. He was given an injection of the tendon sheath, ligament, and ganglion cyst.

In a September 11, 2013 report, Dr. Brown stated that appellant continued to be treated for fibromyalgia and continued to be fully disabled since November 9, 1997.

In an October 2, 2013 report, Dr. Derman repeated that appellant was being treated for bilateral trigger thumb, right de Quervain's, syndrome and right carpal tunnel syndrome. He opined that he required an independent medical examination, and functional capacity evaluation that was specific to his workplace activities. Dr. Derman instructed appellant to remain on light duty with restrictions as needed.

On November 7, 2013 appellant requested reconsideration.

By decision dated January 2, 2014, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

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 OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.[7] 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.[8]

ANALYSIS

The Board finds appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered. The Board further finds that appellant did not submit new and relevant medical evidence which required OWCP to conduct a merit review. OWCP therefore did not abuse its discretion by denying merit review.

Dr. Derman's reports reiterated his previously stated opinions that appellant continued to have the diagnosed conditions of right trigger thumb, right de Quervain's syndrome, and carpal tunnel syndrome. He also repeated his recommendation that appellant be referred for another functional capacity test. These are the same opinions Dr. Derman has offered since 2007. His reports reiterated his general recommendations and findings of disability. Dr. Brown stated that appellant continued to be treated for fibromyalgia, a condition not accepted by OWCP, and continued to be fully disabled since November 9, 1997. The reports appellant submitted are cumulative and duplicative.[9]

[7] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[8] *Howard A. Williams*, 45 ECAB 853 (1994).

[9] *See Patricia G. Aiken*, 57 ECAB 441 (2006).

Appellant submitted summary reports from Drs. Derman and Brown. 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.[10] The evidence appellant submitted in connection with his January 2, 2014 reconsideration request is not pertinent to the issue on appeal; *i.e.*, whether he had any continuing disability stemming from his accepted right-sided carpal tunnel syndrome, right-sided de Quervain's syndrome and bilateral trigger thumb conditions.

OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its January 2, 2014 decision.

CONCLUSION

The Board finds that OWCP 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 January 2, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[10] *See David J. McDonald*, 50 ECAB 185 (1998).