United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
	)	
and	)	**Docket No. 07-05**
	)	**Issued: May 17, 2007**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 28, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated June 29, 2006, denying her request for further merit review of her claim. Because more than one year has elapsed between the most recent merit decision dated June 3, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's 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 April 24, 1998 appellant, then a 53-year-old paralegal, filed an occupational disease claim alleging that she sustained sinusitis and acute bronchitis with bronchospasm and had a "sarcoidosis history" in the performance of duty. The Office accepted her claim for temporary

aggravation of sinusitis, acute bronchitis and bronchospasm. Appellant received appropriate compensation benefits.[1]

In an April 14, 1998 report, Dr. Farid Beshalrab, a physician of unknown specialty, diagnosed acute bronchitis with bronchospasm and advised that appellant could return to regular duty "after completion of office construction." In an April 27, 1998 report, a physician whose signature is illegible, diagnosed sinusitis and acute bronchitis with bronchospasm. The physician checked the box "yes" that appellant's condition was caused or aggravated by an employment condition and advised that she could resume regular duty "[p]ost construction."

On July 14, 2002 appellant filed a recurrence of disability in July and October 5, 1998, and October 15, 2000. She alleged that her physician advised her that she was not to return to the same "hostile on-the-job environment" and her employer returned her to the same environment.

On July 30, 2002 the Office received a September 23, 1998 report in which a pulmonary specialist, whose signature is illegible, diagnosed sarcoidosis, sinusitis and acute bronchitis with bronchospasm. The physician also checked the box "yes" in response to whether appellant's condition was due to the injury for which compensation is claimed.

In a February 22, 2005 letter, appellant stated that her condition had continued since her claim was accepted in 1988. While the Office indicated that her sarcoidosis was temporary, she alleged a "continuous decrease in lung function." Appellant described her subsequent employment history after her position at the employing establishment was terminated and she was rehired with a temporary appointment, which ended in October 1999. Her subsequent employment included working for Spherion, Polar Air, a subsidiary of General Electric and the "SBA-Disaster Area 4." Appellant noted that she was presently unemployed and on State disability since March 2003. She further alleged that she had lifelong allergies to cigarette smoke, pet dander, wool, household dust and smog. Since appellant's exposure to drywall dust at the employing establishment, she had never recovered and her lungs showed advanced signs of damage. She alleged that she was not exposed to contaminants in any of the subsequent positions or in her home.

In a March 21, 2003 report, Dr. Adi Klein, Board-certified in internal medicine, diagnosed sarcoidosis with moderate severe restriction and defusing capacity defect, tenosynovitis and left wrist spur. He provided physical restrictions, including no lifting and carrying over 20 pounds occasionally and 10 pounds frequently due to lungs, standing and working for no more than 4 hours in an 8-hour workday, with appropriate breaks and sitting for no more than 6 hours in an 8-hour workday. Dr. Klein provided a special restriction of no working with dust or fumes due to lungs and a special limitation of repeat manipulation due to left wrist to be done occasionally. In an April 3, 2003 report, Dr. David Balfe, a physician of unknown specialty, advised that appellant could not take a methacholine challenge test, as her pre-baseline forced expiratory volume reading was 50 percent of predicted which excluded her

[1] The record reflects that the claim was eventually closed. The record also reflects that no wage-loss compensation was paid but that 95.25 hours of leave were used during the period April 14 to July 8, 1998, which was authorized to be repurchased.

from having the test performed. The Office also received numerous pulmonary function test results.

A May 7, 2004 computerized tomography (CT) scan read by Dr. Ashley Wachsman, a Board-certified diagnostic radiologist, revealed that appellant had mediastinal adenopathy and pleuroparenchymal disease without significant interval change, except for slight progression at the right lung base, with a focal area at the right costophrenic angle.

In a March 30, 2005 telephone memorandum, appellant was advised that the Office would review her claim to determine whether it should be reopened.

On April 20, 2005 the Office subsequently received a January 16, 2002 letter from appellant to her representative describing her claim, a copy of a March 10, 2005 decision from the Social Security Administration, which found that she was eligible for benefits for supplemental social security income and a printout from the job accommodation network regarding her sarcoidosis and work site accommodation.

By decision dated June 3, 2005, the Office denied appellant's claim for a recurrence of disability. The Office found that the evidence was insufficient to establish a spontaneous return or increase in disability due to a previously accepted work-related injury. There was no medical evidence to establish that the current condition was related to the April 14, 1998 injury. The Office noted that there was no medical evidence to establish that her preexisting sarcoidosis was aggravated by the employment factors that caused or aggravated her April 14, 1998 injury.

On July 6, 2005 appellant called the Office regarding the June 3, 2005 decision and alleged that she did not interpret the March 20, 2005 request as a request for additional evidence, nor did she realize that she only had 30 days to request a hearing, for which the time had expired. She noted that she would submit a request for reconsideration.

By letter dated June 3, 2006, appellant requested reconsideration and submitted additional evidence. She contended that her condition was worsening and questioned why the Office had closed her claim before it received any medical reports. Appellant also questioned why her case remained closed after the Office received her September 23, 1998 Form CA-20a and the October 29, 1998 CA-7 form. She also noted that the Office had requested all of her medical records; however, they were previously with the Social Security Administration. Appellant stated that now she had the records, which were comprised of two full file boxes of medical records, which she could not afford to send.

Appellant described her limitations, medications and her employment injury. She alleged that her recurrence dates were October 15, 2000 and May 20, 2001. After appellant was placed on state disability, she tried to rejoin the workforce on June 14, 2001; however, she became ill and subsequently went back on disability on June 26, 2001. She enclosed a Form CA-7 dated October 15, 1998, and attending physician's reports dated April 27, 1998 and a copy of a September 23, 1998 report from a physician whose signature is illegible. The report diagnosed sarcoidosis, sinusitis and acute bronchitis with bronchospasm. The physician also checked the box "yes" in response to whether appellant's condition was due to the injury for which compensation is claimed. Appellant also enclosed a copy of a July 14, 2002 notice of recurrence

for the dates of October 5, 1998 and October 15, 2000. The Office also received an accident report which pertained to incidents on April 14 and September 30, 1998.

By decision dated June 29, 2006, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence and thus it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the Office; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[3]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[4]

ANALYSIS

Appellant disagreed with the Office's June 3, 2005 decision, which denied her claim for a recurrence. The underlying issue on reconsideration was whether she submitted sufficient medical evidence to show that she sustained a recurrence of disability causally related to her accepted employment injury. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she sustained a recurrence of disability causally related to her accepted employment injury.

On reconsideration appellant made several arguments with regard to how her claim was handled, why it was closed, that her employer completed her CA-7 form, and to the Office's request for her medical records. The Office also received a partly illegible accident report which pertained to an incident on April 14 and September 30, 1998, and a Form CA-7 dated

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b).

[4] 20 C.F.R. § 10.608(b).

October 15, 1998. However, the Board notes that this evidence and these arguments are not relevant to the issue of her claim for a recurrence, as the issue is medical in nature and the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

Appellant also submitted copies of documents which were previously received by the Office. They included a copy of her April 24, 1998 claim for occupational disease, her August 19, 1998 acceptance letter from the Office, and a copy of a July 14, 2002 notice of recurrence for the dates of October 5, 1998 and October 15, 2000. However, as noted above this evidence is not relevant to the issue of her claim for a recurrence, as the issue is medical in nature and the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[6] Additionally, the Board has held that submission of duplicative or repetitious evidence is insufficient to require the Office to reopen a case for merit review.[7]

Appellant also alleged that her accepted condition never ceased but continued and worsened. In support of her argument, she submitted copies of a previously received attending physician's report dated September 23, 1998, from a physician whose signature is illegible, and who is described as a pulmonary specialist. The physician diagnosed sarcoidosis, sinusitis, and acute bronchitis with bronchospasm and checked the box "yes" in response to whether appellant's condition was due to the injury for which compensation is claimed. However, as noted above, the submission of duplicative or repetitious evidence is insufficient to require the Office to reopen a case for merit review.[8]

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.[9]

CONCLUSION

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

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[5] *Robert P. Mitchell*, 52 ECAB116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

[6] *Id.*

[7] *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984); *Jerome Ginsburg*, 32 ECAB 31 (1980).

[8] *Id.*

[9] The Board notes that, subsequent to the Office's June 3, 2005 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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