

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

STEVE A. HORBOL, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
CAMP PENDLETON, San Diego, CA, Employer**

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**Docket No. 05-666
Issued: July 11, 2005**

Appearances:
Steve A. Horbol, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 24, 2005 appellant filed a timely appeal from a nonmerit Office of Workers' Compensation Programs' decision dated November 4, 2004. Because more than one year has elapsed between the last merit decision dated November 12, 2003 and the filing of this appeal on January 24, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, a 46-year-old veterans service representative, sustained an injury to his lower back on April 16, 2001. He filed a claim for benefits on April 27, 2001, which the Office accepted for lumbar strain. By decision dated December 5, 2001, the Office terminated his compensation benefits. By decision dated June 18,

2003, an Office hearing representative affirmed the December 5, 2001 decision, but remanded the case to resolve a conflict in the medical evidence regarding whether the April 16, 2001 work injury caused injuries in addition to the accepted lumbar strain and, if so, whether appellant still experienced residuals from the April 2001 employment injury. By decision dated November 12, 2003, the Office found that appellant had no continuing disability or impairment causally related to the April 16, 2001 employment injury.

In a September 3, 2004 decision,¹ the Board affirmed the Office's November 12, 2003 decision which denied appellant's claim for continuing disability. The facts of this case are set forth in the Board's September 3, 2004 decision and are herein incorporated by reference.

By letter dated October 26, 2004, appellant requested reconsideration. Appellant submitted a magnetic resonance imaging (MRI) scan dated June 1, 2004, which was performed by Dr. Adam Attoun, an osteopath. The MRI scan indicated that appellant had a bilateral facet arthrosis at the levels of L3-4 through L5-S1, which resulted in at least mild bilateral neural foraminal narrowing at each level, worse at L5-S1 on the right; diffuse intervertebral disc desiccation, with a small annular fissure associated with the L4-5 disc posteriorly. The results indicated that neither focal disc herniations nor spinal canal stenosis were present at any level. Based on this June 1, 2004 MRI scan, appellant asserted that the MRI scans taken several years after the April 16, 2001 injury indicated that his disc herniations had resolved absent surgery, when compared to the MRI scans taken a few months after the April 16, 2001 work injury, which showed increased levels of herniation. Appellant therefore contended that the April 16, 2001 work injury caused an aggravation of his spinal condition.

By decision dated November 4, 2004, the Office 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 the Office 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 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.² 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.³

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not

¹ Docket No. 04-722 (issued September 3, 2004).

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

³ *Howard A. Williams*, 45 ECAB 853 (1994).

previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The June 1, 2004 report from Dr. Attoun stated findings based on the MRI scan and presented a diagnosis of appellant's current condition based on these test results. The report, however, did not provide any rationalized medical opinion pertinent to the relevant issue of whether appellant had continuing disability stemming from his accepted lumbar strain condition. 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.⁴ 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.⁵

CONCLUSION

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ See *David J. McDonald*, 50 ECAB 185 (1998).

⁵ The Board notes that appellant submitted additional evidence to the record following the May 29, 2003 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).