United States Department of Labor
Employees' Compensation Appeals Board

LEE HAYWOOD, Appellant	)	
and	)	**Docket Nos. 03-727 and 03-1005**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Jacksonville, FL, Employer	)	**Issued: March 30, 2005**

Appearances:
Lee Haywood, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 28, 2003 appellant filed a timely appeal from a January 10, 2003 nonmerit decision and an August 30, 2002 merit decision denying a claim for a consequential dental condition. On March 19, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 6, 2003 decision denying his request for an attendant's allowance and the attendant's expenses for travel and meals; a nonmerit February 25, 2003 decision regarding pay rate; a February 21, 2003 merit decision denying his request for an orthopedic bed; and a February 6, 2003 merit decision denying his request for a higher pay rate. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that his claimed dental conditions are causally related to his employment; (2) whether the Office properly based appellant's effective pay rate on his salary as of April 9, 2001, the date he stopped work due to his work-related disability; (3) whether the Office properly denied appellant's request for payment of an attendant's allowance and the attendant's expenses for

travel and meals; (4) whether the Office properly denied appellant's request for reimbursement for purchase of an orthopedic bed on October 12, 2002; and (5) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 50-year-old claims examiner, filed a claim for benefits based on occupational disease on May 21, 2001, claiming that he developed degenerative disc disease and a herniated nucleus pulposus (HNP) causally related to factors of his employment. The Office accepted his claim for degenerative disc disease, L4-5 hemilaminectomy with discectomy, recurrent lumbar laminectomy at L4-5, HNP at L4-5 and major depressive disorder, recurrent. Appellant stopped work on April 9, 2001 due to his accepted lower back conditions and returned to light duty for four hours a day on August 4, 2001. He sustained a recurrence of his work-related disability and stopped work again on December 5, 2001 and has not returned to work since that time. The Office paid appropriate compensation for total disability.

In a letter to the Office dated January 24, 2002, Dr. William D. Baxter, a dentist, requested authorization to perform dental surgery on appellant. He related that appellant claimed that he grinds his teeth at night due to back problems and consequentially has a chipped and fractured lingual of tooth number 3, incisal of tooth number 22 and lingual of tooth number 25. Dr. Baxter also opined that appellant's tooth number three needed a surface inlay. He advised that tooth numbers 22 and 25 required composite fillings. He recommended a night guard to prevent temporal mandible jaw syndrome and further fracturing.[1]

In an Office memorandum dated February 11, 2002, an Office medical adviser recommended that the Office not accept appellant's teeth conditions as a consequential injury and not authorize reimbursement for a night guard or medical treatment, as Dr. Baxter's report did not indicate whether the dental conditions were preexisting. The Office medical adviser also stated that Dr. Baxter had not provided a probative, rationalized medical opinion establishing that the dental conditions were causally related to his accepted back conditions.

By letter dated February 14, 2002, the Office requested that appellant provide additional medical evidence in support of his claim for a consequential injury to his teeth, including a comprehensive medical report. The Office also requested that he provide a detailed history of injury indicating how his accepted back conditions caused or aggravated the claimed tooth conditions.

In a March 11, 2002 report, Dr. Abraham Rogozinski, a Board-certified neurosurgeon, stated that appellant was able to perform modified duties for eight hours. He stated that appellant could lift up to 20 pounds occasionally and up to 10 pounds frequently. Dr. Rogozinski outlined limitations on sitting no more than two consecutive hours and on walking and standing no more than one hour consecutively. In a March 11, 2002 work capacity evaluation, he reiterated these work restrictions.

[1] By letter dated February 20, 2002, appellant requested compensation for a claimed consequential injury to several of his teeth, claiming that he developed several dental conditions causally related to his accepted conditions.

In a letter to the Office dated March 12, 2002, Dr. Baxter stated that he was submitting to the Office x-rays and dental treatment notes pertaining to appellant's teeth conditions. By letter dated April 3, 2002, the Office advised Dr. Baxter that it had not received any of the dental treatment records he stated he would be forwarding.

In a report dated June 28, 2002, Dr. Arnold A. Zeal, a Board-certified neurosurgeon who had performed June 22, 2001 L4-5 laminectomy and discectomy on appellant, stated findings on examination and advised that his symptoms were extremely vague and unspecific. He advised that he was unable to confirm any objective neurological deficit. Dr. Zeal further stated:

> "[Appellant] does have fairly pronounced atrophy of the left quadriceps but this does not fit the distribution of the nerve root which arises at the L4-5 level. I am not sure if the atrophy is long-standing but clearly it has been there for some time to be at this point and it is clear not an acute phenomenon. This does not go along with the area of tingling he has in the lateral border of his left foot which is where his actual numbness is. Aside from the atrophy, there is no objective neurological deficit and no real restriction on range of motion."

By letter dated August 8, 2002, appellant requested reimbursement for expenses for an attendant's allowance, retroactive to the date of his recurrence of his temporary total disability.[2] Accompanying the request was an August 1, 2002 Form EN1090 reimbursement questionnaire, completed by Dr. Manual Portalatin, a Board-certified orthopedic surgeon, who indicated that appellant required assistance driving short distances; dressing himself; bathing himself; getting out of bed for two to three hours per day; and getting out of doors. He stated that appellant was able to stand or walk on his own for only 10 to 20 seconds, was unable to sit for more than 20 seconds, and spent most of his day lying down. Dr. Portalatin further stated that appellant's wife, who performed the duties of a personal attendant, helped appellant dress, shave, walk and perform toilet functions.

By decision dated August 30, 2002, the Office denied appellant's claim for a consequential injury based on a chipped and fractured lingual of tooth number 3; a fractured incisial of tooth number 22; a fractured lingual of tooth number 25 and related treatment for these teeth conditions.

By letter dated September 6, 2002, appellant requested authorization for the purchase of a hospital bed. Accompanying the request was a September 6, 2002 prescription note from Dr. Zeal.

By letter dated September 16, 2002, the Office requested that appellant submit a detailed report from his physician which addressed the medical necessity for the hospital bed so that it could determine whether the cost was reimbursable. The Office asked appellant to submit additional information to determine whether the purchase or rental of a hospital bed -- double size only -- was necessary and appropriate for effective treatment of his work-related conditions of degenerative disc disease, L4-5 hemilaminotomy with discectomy, depressive disorder and

[2] Appellant stated that the date of recurrence was November 2001. The actual date of recurrence is December 5, 2001.

lumbar laminectomy, HNP at L4-5, left side. In a response dated September 20, 2002, Dr. Zeal stated:

> "Please be advised that I have recommended [appellant] use a hospital bed, after two operations on his lumbar area he does have difficulty getting in and out of bed and resting at night. Having the ability to position a hospital bed in a comfortable position will be incredibly helpful to him in his recovery. I would recommend that he continue to use this for a minimum of six months, hopefully for over a year if not even permanently. Having the use of a hospital bed should expedite his recovery and minimize his recurrent and/or future symptoms. This should make his life much more comfortable. The support this bed provides will also be of enormous benefit to his lumbar spine area."

By letter dated October 19, 2002, appellant contended that the pay rate used by the Office for payment of his total disability compensation was incorrect. Appellant stated that the Office had erred in basing his pay rate on his salary as of the date of injury, April 9, 2001. He stated that this method would have been correct had he made a claim for a leave buyback retroactive to April 9, 2001. Appellant stated, however, that because he had not elected not to do so, the Office was required to use the pay rate in effect when his disability began, December 9, 2001.

By letter dated November 4, 2002, appellant notified the Office that he had purchased a bed, for which he was requesting authorization for reimbursement. Accompanying the letter was a November 4, 2002 receipt from the McMillan Bedding Company stipulating that appellant had purchased a 76" by 80" bed, at the cost of $2,762.00. In a memorandum of telephone call dated November 6, 2002, the Office stated that it had called the McMillan Bedding Company and asked them to stipulate to the prize of a full-size bed, which they stated was $1,610.00. The Office stated that appellant had submitted the pricing for a king-size bed, which it believed was not necessary. The Office further stated that it would instruct appellant to pay the difference between the California king-size bed he purchased and the full-size bed it authorized.

By letter dated December 16, 2002, appellant requested reconsideration of the August 30, 2002 Office decision. He did not submit any additional medical evidence pertaining to his consequential injury claim with his request.

By decision dated January 10, 2003, the Office denied reconsideration without a merit 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.

By letter dated January 15, 2003, the Office denied appellant's request for authorization for reimbursement for his purchase of the king-size bed. The Office stated that it had authorized the purchase of a double-size hospital bed in its September 16, 2002 letter, the equivalent of which was the full-size bed offered by the McMillan Bedding Company at the price of $1,610.00. The Office agreed to pay the price for the full-size bed but rejected appellant's request for reimbursement of $1,152.00, the difference between the cost of the full-size bed and the cost of the king-size bed appellant purchased, $2,762.00.

By letter dated January 22, 2003, appellant contested the Office's rejection of his request for reimbursement for the cost of a king-size bed. Appellant stated that the Office's rejection of authorization for a king-size bed was unreasonable and improper because it would require him and his spouse to sleep in separate beds. He requested that the Office issue a formal decision on the merits.

By decision dated February 6, 2003, the Office denied appellant's claim for a higher pay rate based on his December 9, 2001 rate of pay. The Office stated that, pursuant to section 8101(4)[3] of the Federal Employees' Compensation Act, monthly pay means the monthly pay at the time of injury, the monthly pay at the time disability began, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113. The Office stated that, because appellant stopped work on April 9, 2001 and his recurrence occurred on December 9, 2001, less than six months after he stopped work, his pay rate was properly based on the date he stopped work.

By decision dated February 21, 2003, the Office denied appellant's request for reimbursement for his purchase of the king size bed. The Office stated that it had authorized the purchase of a hospital bed, that a full-size adjustable electric bed at the price of $1,610.00 was available, and that a double-size bed was not available through the vendor. The Office indicated that appellant had failed to explain the necessity for purchasing a $2,762.00 king-size bed when he could have purchased a full-size hospital bed for $1,610.00 and was therefore responsible for payment of the price difference.

By letter dated February 13, 2003, appellant requested reconsideration of the February 6, 2003 Office decision denying his request for a pay rate based on the April 9, 2001 date-of-injury pay rate. Appellant did not submit any additional evidence with his request. By decision dated February 25, 2003, the Office denied reconsideration without a merit 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.

By decision dated March 6, 2003, the Office denied appellant's request for reimbursement for the services of an attendant as of November 2001 and continuing.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an alleged medical condition is causally related to factors of his federal employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's

[3] 5 U.S.C. § 8101(4).

[4] *Carolina B. Taylor,* 44 ECAB 591, 595 (1993).

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[5]

It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[6]

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

> "[W]hen the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause.
>
> "The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[7]

ANALYSIS -- ISSUE 1

In this case, appellant has not submitted sufficient medical evidence indicating that his dental conditions were causally related to factors of his employment or were consequential to his accepted medical conditions.

Dr. Baxter's January 24, 2002 letter describing appellant's need for dental treatment does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment and his claimed dental conditions. Causal relationship must be established by rationalized medical opinion evidence; however, this report did not contain a probative, rationalized medical opinion explaining how appellant's claimed condition was causally related to his accepted employment injury. Dr. Baxter noted that appellant related his dental problems to unspecified "back problems," but he did not provide any opinion that appellant's dental problems were related to employment-related back problems or any other employment-related

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Robert W. Meeson*, 44 ECAB 834 (1993).

[7] A. Larson, *The Law of Workers' Compensation* § 13.11 (1993).

condition.[8] He indicated that appellant grinded his teeth but did not provide any opinion on the cause of the grinding. If there is a physiological reason why a back injury would cause teeth grinding, Dr. Baxter did not offer any insight or supporting medical rationale to explain this process. Dr. Baxter's report did not contain the necessary rationalized medical opinion addressing and explaining why appellant's claimed tooth condition was an incident of his employment. He was provided an opportunity to submit additional reports regarding the cause of appellant's dental problems, but he did not submit such evidence to the Office.

Accordingly, as appellant failed to meet his burden to submit probative, rationalized medical evidence establishing that his claimed dental conditions were caused by factors or incidents of his employment, the Office properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8101(4) states:

> "'[M]onthly pay' means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under [s]ection 8113 of this title with respect to any period."

Office procedures states that "[t]he dates when 'disability began' or 'compensable disability recurred' are the dates the employee stopped work, not the dates pay stopped…."[9]

ANALYSIS -- ISSUE 2

In its February 6, 2003 decision, the Office noted that because appellant stopped work on April 9, 2001, returned to part-time work on August 4, 2001 and stopped work again on December 9, 2001, less than six months after he returned to work, his pay rate was based on the date he initially stopped work, April 9, 2001, not the date of recurrence. This finding was proper. The Act requires that the employee resume regular full-time employment for six months before the date of recurrence of disability can be used for pay rate purposes. Appellant did not resume regular full-time employment for six months, therefore his pay rate was properly based on the date of disability, the date he initially stopped work.

On appeal appellant alleges that April 9, 2001 is not the date his disability began because he did not buyback leave until December 2001. The Board has previously found that pay rate cannot be based on the date that sick leave expires.[10] Absence from work due to employment-

[8] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.5(a)(1) (March 1996).

[10] *Samuel C. Miller*, 55 ECAB ___ (Docket No. 03-1233, issued October 2, 2003).

related injury, not leave usage determines the date of disability. Appellant was first absent from work on April 9, 2001 due to the employment-related injury, this is the date disability began.

LEGAL PRECEDENT -- ISSUE 3

Section 8111(a)[11] of the Act. This section provides:

> "(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than $1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance."

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that he is in need of constant care.[12]

The claimant is not required to need around-the-clock care. He only has to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting a claimant in his personal needs such as dressing, bathing or using the toilet.[13]

Federal regulations implement this provision of the Act as follows:

> "**Section 10.314 Will the Office pay for the services of an attendant?**
>
> "Yes, [the Office] will pay for the services of an attendant up to a maximum of $1,500[.00] a month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. § 8111(a), the Director has determined that, except where payments were being made prior to January 4, 1999, direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act and medical bills for these services will be considered under section 10.801. This decision is based on the following factors:
>
> > (a) The additional payments authorized under section 8111(a) should not be necessary since [the Office] will authorize payment for personal care services under 5 U.S.C. § 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be

[11] 5 U.S.C. § 8111(a).

[12] *Ronald A. Gillis*, 53 ECAB 437 (2002).

[13] *Id.*

> medically necessary and are provided by a home health aide, licensed practical nurse or similarly trained individual.
>
> (b) A home health aide, licensed practical nurse or similarly trained individual is better able to provide quality personal care services, including assistance in feeding, bathing and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, [the Office] can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to [the Office], where the amount billed will be subject to [the Office's] fee schedule, will result in greater fiscal accountability."[14]

ANALYSIS -- ISSUE 3

In this case, appellant stopped work in April 2001, had lumbar surgery in June 2001, and went off work on December 5, 2001 when he experienced a recurrence of disability. By letter dated August 8, 2002, appellant requested reimbursement for expenses for an attendant's allowance, retroactive to the date of his recurrence of his temporary total disability, based on services provided to him by his wife during this period of disability. As section 10.314 of the regulations states, the Office will authorize payment for personal care services if they are provided by a home health aide, licensed nurse or similarly trained individual. The initial question for determination therefore is whether appellant's wife was a home health aide, licensed practical nurse, or similarly trained individual. The evidence of record does not establish that appellant's wife met the regulatory requirements to qualify as an attendant; the evidence of record does not establish that appellant's wife is a home health aide, licensed nurse or similarly trained individual.

Furthermore, the evidence provided by appellant indicates that his wife did not fulfill the statutory requirements of an attendant subsequent to his surgery. She performed domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services which are generally excepted by Board precedent.[15] Appellant did not establish that his wife was assisting him in maintaining his daily existence; *i.e.*, helping him walk, eat meals, bathe and dress, pursuant to medical requirements.

The only evidence appellant submitted in support of his request was the August 1, 2002 Form EN1090 reimbursement questionnaire, completed by Dr. Portalatin, who stated summarily on the form that appellant required assistance driving short distances, dressing himself, bathing himself; getting out of bed for two to three hours per day and getting out of doors. The report does not address any specific requests for any specific time frames, as appellant did not

[14] 20 C.F.R. § 10.314 (1999).

[15] *See Grant S. Pfeiffer*, 42 ECAB 647 (1991).

enumerate them. The record contains no corroboration for these assertions. In addition, appellant has failed to provide medical evidence sufficient to support the necessity of a personal attendant. Dr. Portalatin also submitted a work capacity evaluation dated May 24, 2002, in which he outlined restrictions but did not indicate any need for an attendant. In a March 11, 2002 work capacity evaluation, Dr. Rogozinski stated that appellant could work an eight-hour day, with limitations on sitting no more than two consecutive hours, and no more than one hour of walking and standing. Dr. Zeal indicated in his June 28, 2002 report that appellant had "arises with no minimal difficulty and he walks well in a normal fashion. He was able to walk on his toes heels without any parasis." Neither of these reports indicated the necessity for a personal attendant. Based on this evidence, the Office did not abuse its discretion in denying appellant reimbursement for a personal attendant for payment of an attendant's allowance in its March 6, 2003 decision.

Accordingly, the medical evidence establishes that appellant's employment-related lower back conditions have not resulted in any serious orthopedic disability making appellant so helpless as to require the services of an attendant. Appellant produced no evidence that his disability prevented him from performing essential life functions such as bathing, eating or dressing, or that he required his wife's help in caring for himself. Although appellant's wife might have performed certain domestic chores including preparing meals, providing transportation and picking up groceries, such services are not compensable as services of an attendant under the Act.[16] Accordingly, the Office affirms the March 6, 2003 decision denying reimbursement for the services of a personal attendant.

LEGAL PRECEDENT -- ISSUE 4

Section 8103 of the Act[17] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[18] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[19]

[16] *James B. Throneberry*, 36 ECAB 548 (1985).

[17] 5 U.S.C. § 8101 *et seq.*

[18] 5 U.S.C. § 8103.

[19] *Daniel J. Perea*, 42 ECAB 214 (1990).

The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions, and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relation must include rationalized medical evidence.

ANALYSIS -- ISSUE 4

In this case, the Office did authorize purchase of an electric double-size hospital bed. Appellant has the burden of proof to establish that the Office abused its discretion by denying reimbursement for a California king-size electric hospital bed. In support of his request for the king-size bed, appellant submitted the September 16, 2002 report from Dr. Zeal. He recommended the use of a hospital bed, noting that after two operations on his lumbar area appellant had difficulty getting in and out of bed and resting at night. Having the ability to position a hospital bed in a comfortable position will be incredibly helpful and would expedite his recovery and minimize his recurrent and/or future symptoms. Dr. Zeal advised that the support this bed provided would also be of enormous benefit to his lumbar spine area. However, Dr. Zeal did not state that a king-size bed was necessary to cure or give relief to appellant's work-related back condition. In its March 6, 2003 decision, the Office found that Dr. Zeal had only authorized an electric hospital bed, and stated that a king-sized bed was not necessary. The Office found that the king-sized bed, while conducive to having two people sleep in it, was not likely to cure or relieve appellant's apparently improving condition, or decrease his degree of disability.

Dr. Zeal's report, which constitutes the only medical evidence of record pertaining to appellant's need for a hospital bed, contains insufficient medical rationale setting forth the need for a king-sized bed. Dr. Zeal did not opine that appellant's postsurgical condition required the use of a king-size hospital bed to cure, give relief, lessen appellant's period of disability or amount of monthly compensation. In the absence of medical rationale explaining how and why the worsening of appellant's condition would require the use of a king-size electric hospital bed, Dr. Zeal's report is insufficient to meet appellant's burden of proof.[20]

Therefore, the Office properly denied authorization for payment of such equipment, and such denial did not constitute an abuse of discretion.

LEGAL PRECEDENT -- ISSUE 5

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.[21] 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.[22]

[20] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[21] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

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

ANALYSIS -- ISSUE 5

In the present case, appellant has not shown in his December 16, 2002 and February 13, 2003 letters 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 previously considered by the Office. In support of his December 16, 2002 request for reconsideration, appellant submitted several diagnostic reports, treatment reports and form reports, but these are either cumulative and repetitive of previous reports or are not pertinent to his claim for a consequential injury in that they contained no opinion that appellant's dental problems were employment related. 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.[23] Appellant's reconsideration, therefore, did not contain any new and relevant medical evidence for the Office to review. Additionally, the December 16, 2002 letter 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. Although appellant generally contended that his claimed current conditions were causally related to his employment, he failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office properly refused to reopen appellant's claim for a review on the merits. In support of his February 13, 2003 request for reconsideration, appellant did not submit any new evidence, but merely reiterated his previous argument that the pay rate determination was wrong because he did not request leave buyback.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that his claimed dental conditions are causally related to his employment. The Board finds that the Office properly based appellant's effective pay rate on his salary as of April 9, 2001, the date he stopped work due to a recurrence of his work-related disability. The Board finds that the Office properly denied appellant's request for payment of an attendant's allowance and the attendant's expenses for travel and meals. The Board finds that the Office properly denied appellant's request for reimbursement for purchase of an orthopedic bed on October 12, 2002. The Board finds that the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

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

ORDER

IT IS HEREBY ORDERED THAT the March 6, February 25, 21, 6 and January 10, 2003 and August 30, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 30, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member