United States Department of Labor
Employees' Compensation Appeals Board

SHIRLEY R. HANSELKA, Appellant	)	
and	)	**Docket No. 05-1797**
	)	**Issued: April 18, 2006**
DEPARTMENT OF THE ARMY, WHITE SANDS MISSILE RANGE, White Sands, NM, Employer	)	

Appearances:
Shirley R. Hanselka, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 30, 2005 appellant filed a timely appeal from a May 26, 2005 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration under 5 U.S.C. § 8128. As there is no merit decision of the Office within one year of the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the May 26, 2005 nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[1] *See* 20 C.F.R. §§ 501.2(c), 501.3.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated December 2, 1998, the Board reversed a December 8, 1995 Office decision terminating appellant's compensation on the grounds that she had no further disability due to her February 2, 1988 employment injuries, accepted for lumbar strain and a temporary aggravation of degenerative disc disease.[2] The Board affirmed a June 18, 1996 Office decision finding that she did not establish a recurrence of disability due to her February 2, 1998 employment injury. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

Appellant elected to receive workers' compensation benefits in lieu of disability retirement effective May 21, 1990.[3]

By letter dated February 19, 2004, the Office requested an updated medical report from appellant regarding her condition. She did not respond to the Office's request. On April 8, 2004 the Office referred appellant to Dr. Hendrick J. Arnold, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated June 24, 2004, Dr. Arnold found that appellant's accepted conditions of lumbar strain and a temporary aggravation of degenerative disc disease had resolved and that the neurological changes to her lower extremities were from a nonemployment-related injury. He opined that, considering only her lumbar spine, she could return to her usual employment.

By decision dated August 6, 2004, the Office terminated appellant's compensation on the grounds that the weight of the evidence established that she had no further condition or disability due to her February 1988 employment injury.

In a letter dated March 1, 2005, appellant requested reconsideration. She contended that a magnetic resonance imaging (MRI) scan study dated January 6, 2005 demonstrated that her back sprain was "still active, which does show just cause for my chronic pain syndrome." Appellant also argued that a sleep study established that she experienced chronic pain. In support of her contentions, she submitted the results of the January 6, 2005 MRI scan, which revealed a small central and left paracentral disc herniation at L2-3. Appellant further submitted the results of a sleep study dated February 2, 2005, which found the absence of "alpha delta sleep" which "can sometimes be seen in chronic pain."

Appellant additionally submitted reports dated August 31, 2004 and January 7, 2005 from Todd A. Luft, a physician's assistant.

In an unsigned report dated October 4, 2004, Dr. Kenneth B. Kurica, a Board-certified orthopedic surgeon, discussed her medical history and listed findings of physical examination. He stated, "At this time, it is very difficult to describe the current objective findings for

[2] *Shirley R. Hanselka*, Docket No. 96-2217 (issued December 2, 1998).

[3] By decision dated June 27, 2001, the Office determined that appellant was not entitled to a recurrent pay rate; however, the Office vacated this decision on August 31, 2001 and found that she was entitled to a recurrent pay rate beginning May 21, 1990.

diagnostic purposes and quite difficult in lieu of a history that goes back so many years with multiple accidents and most recently a work-related accident in 1988, I believe." Dr. Kurica noted that the MRI scan revealed findings normal for her age. He opined that she could perform part-time sedentary work and recommended a functional capacity evaluation.

By decision dated May 26, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of its August 6, 2004 decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[5] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[6] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[7]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[8] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[9] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[10]

ANALYSIS

The Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Arnold, established that she had no further disability or residual condition due to the accepted conditions of lumbar strain and a temporary aggravation of degenerative disc disease. In her reconsideration request, appellant

[4] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[5] 20 C.F.R. § 10.606(b)(2).

[6] 20 C.F.R. § 10.607(a).

[7] 20 C.F.R. § 10.608(b).

[8] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[9] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[10] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

argued that a January 6, 2005 MRI scan supported a finding that her back strain had not resolved and also contended that the results of a sleep study revealed she had chronic pain. Her lay opinion, however, is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.[11]

Appellant submitted the results of the MRI scan dated January 6, 2005, which showed a small central and left paracentral disc herniation at L2-3 and the results of a February 2, 2005 sleep study which revealed the absence of alpha delta sleep, a sign of chronic pain. The MRI scan and sleep study, however, merely report findings and thus are not new and relevant evidence as they do not contain an opinion from a physician regarding the pertinent issue of whether appellant has any continuing disability or condition due to her accepted employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[12]

The record also contained progress notes from a physician's assistant dated August 31, 2004 and January 7, 2005. A physician's assistant, however, is not considered a physician under the Act and thus his reports do not constitute relevant evidence sufficient to warrant reopening appellant's case on the merits.[13]

Appellant further submitted an unsigned report dated October 4, 2004 from Dr. Kurica, who indicated that it was "very difficult to describe the current objective findings for diagnostic purposes" and opined that the changes on her MRI scan were consistent with her age. The Board has held that unsigned reports are of no probative value, and thus Dr. Kurica's report does not constitute new and relevant evidence.[14]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[11] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[12] *See Ronald A. Eldridge*, *supra* note 9.

[13] *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

[14] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 26, 2005 is affirmed.

Issued: April 18, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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