United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 06-1140**
	)	**Issued: November 9, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, 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 April 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 22, 2005 nonmerit decision, denying her request for an oral hearing and a January 19, 2006 nonmerit decision denying her request for reconsideration. As the Office's most recent merit decision on appellant's claim was issued on January 24, 2005, the Board does not have jurisdiction to review the merits of this case, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 26, 1987 appellant, then a 35-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 1987 she injured her back when she slipped and fell on an oily floor at the employing establishment. Her claim was accepted for a lumbar strain.

Appellant was treated by Dr. Rida N. Azer, a Board-certified orthopedic surgeon. On November 10, 2003 Dr. Azer provided diagnoses of progressive left carpal tunnel syndrome and chronic, stable left C5 and C6 cervical radiculopathy. In a second opinion report dated August 24, 2004, Dr. Robert Smith, a Board-certified orthopedic surgeon, opined that appellant no longer had any residuals of the accepted lumbar strain.

On December 20, 2004 the Office issued a notice of proposed termination of medical and compensation benefits, based on Dr. Smith's second opinion report. By decision dated January 24, 2005, the Office terminated appellant's medical and compensation benefits effective January 22, 2005. The Office found that Dr. Smith's August 24, 2004 report represented the weight of the medical evidence. It established that appellant no longer had residuals or disability related to her accepted employment injury. The Office noted that Dr. Azer failed to address the accepted lumbar strain, but addressed carpal tunnel syndrome and cervical conditions that were not accepted by the Office. It found that he failed to provide rationalized medical evidence that identified appellant's accepted lumbar strain as the source of her disability for work.

On March 18, 2005 appellant requested an oral hearing. On June 22, 2005 the Office denied appellant's request for an oral hearing as untimely. The Office further found that appellant's case could be equally well addressed by a request for reconsideration.

On November 11, 2005 appellant submitted a request for reconsideration. She submitted numerous reports that had previously been received and considered by the Office, including reports from Dr. Azer dated April 1, 1995; February 28, July 1 and November 28, 1997; September 16, 1998; May 5, 1999; September 19, 2000; November 26, 2001; October 28, November 15 and December 31, 2002; October 27 and November 10, 2003; January 2 and September 22, 2004 and January 10, 2005. Appellant also submitted a November 15, 2002 report from Dr. Talaat F. Maximous, a treating physician, and reports dated October 27, 2003 from Dr. Daniel Ignacio, a Board-certified physiatrist.

Appellant submitted unsigned notes from Dr. Azer dated March 2 and May 24, 2005, which reflected appellant's complaints of increasing pain, numbness and weakness in the left wrist and hand. Dr. Azer stated that appellant's cervical spine showed tenderness over C5, C6 and C7, with pain and muscle spasms on movements. In a report dated June 15, 2005, he stated that appellant was treated by conservative measures for the October 23, 1987 work injury and that she had undergone surgery for her right carpal tunnel syndrome. Dr. Azer indicated that she had symptoms of left carpal tunnel syndrome, as well as tenderness over C5, C6 and C7 with limitation of motion of the cervical spine. In an accompanying work capacity evaluation, reflecting his opinion that appellant was totally disabled at that time, he stated that the Office had accepted appellant's claim for "cervical lumbar dis[c] syndrome, carpal tunnel syndrome." In an unsigned report dated June 29, 2005, Dr. Ignacio stated that he had performed an electromyogram (EMG) and nerve conduction study that revealed evidence of severely

progressive left carpal tunnel syndrome and chronic stable right carpal tunnel syndrome. In unsigned notes dated July 6, 2005, Dr. Azer stated that appellant had marked pain in the lumbar spine region and was markedly tender over L4, L5 and S1. He also noted pain and muscle spasms on movements and limitation of motion in the lumbar spine.

By decision dated January 19, 2006, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant further merit review. The Office stated that the medical reports submitted were not relevant to the issue underlying of whether the diagnosed carpal tunnel syndrome and cervical conditions were caused by the accepted injury.[1]

LEGAL PRECEDENT -- ISSUE 1

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of a final decision by the Office.[2] The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[3]

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides: "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."[4]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, including when the request is made after the 30-day period for requesting a hearing and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[5] In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[6]

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[1] The Board notes that appellant submitted additional evidence after the Office rendered its January 19, 2006 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, the evidence presented after the January 19, 2006 decision cannot be considered by the Board. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

[2] 5 U.S.C. § 8124(b)(1).

[3] *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

[4] 20 C.F.R. § 10.616(a). *See also Gerard F. Workinger*, 56 ECAB ___ (Docket No. 04-1028, issued January 18, 2005).

[5] *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

[6] *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, 34 ECAB 216 (1982).

ANALYSIS -- ISSUE 1

Appellant's request for a hearing was dated March 18, 2005, more than 30 days after the Office issued its January 24, 2005 decision. Therefore, appellant was not entitled to a hearing as a matter of right. The Office properly exercised its discretion in denying a hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence on the issue of her termination.[7] The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and probable deduction from established facts.[8] In the present case, the evidence of record does not establish that the Office abused its discretion in denying appellant's hearing request.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[9] 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) constitute relevant and pertinent new evidence not previously considered by the Office.[10] 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.[11] 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 of the merits.

ANALYSIS -- ISSUE 2

The Board finds that the Office's denial of merit review did not constitute an abuse of discretion. Appellant did not contend that the Office had erroneously applied or interpreted a point of law; nor did she advance a point of law or fact not previously considered by the Office. Instead, she stated that she was submitting medical evidence in conjunction with her request which provided a rationalized medical opinion regarding the cause of her condition. However, appellant did not provide new relevant and pertinent medical evidence. Therefore, appellant failed to satisfy any of the standards which would have entitled her to a merit review under the Act.

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[7] *See Joseph R. Giallanza*, 55 ECAB ___ (Docket No. 03-2024, issued December 23, 2003).

[8] *See Andre Thyratron*, 54 ECAB 257 (2002).

[9] Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.606(b)(1)-(2).

[11] *Id.* at § 10.607(a).

The Board notes that many of the reports submitted by appellant in support of her request for reconsideration were either copies of documents previously submitted to and considered by the Office. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.[12]

In its January 24, 2005 decision, the Office terminated appellant's benefits, finding that her treating physician had failed to provide rationalized medical evidence that her accepted lumbar strain was the source of her disability for work. As noted, the Office never accepted carpal tunnel syndrome or cervical radiculopathy as related to the October 23, 1987 injury. Although appellant submitted numerous treatment notes and reports subsequent to the Office's January 24, 2005 decision, this evidence did not address or explain how her carpal tunnel syndrome or cervical conditions were causally related to her accepted lumbar strain. While the reports of Dr. Azer, Dr. Ignacio and Dr. Maximous are new to the records, they are not relevant to the underlying claim. The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[13]

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

CONCLUSION

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

[12] *See Manuel Gill*, 52 ECAB 282 (2001).

[13] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 19, 2006 and June 22, 2005 are affirmed.

Issued: November 9, 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