United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Corvallis, OR, Employer	)	**Docket No. 06-1985** **Issued: February 9, 2007**

Appearances:
Appellant, 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 25, 2006 appellant filed a timely appeal of the June 8, 2006 decision of the Office of Workers' Compensation Programs which denied his reconsideration request. Because more than one year has elapsed between the most recent merit decision dated May 18, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On September 19, 1997 appellant, then a 59-year-old information receptionist, filed a traumatic injury claim alleging that on September 18, 1997 he tripped over a chair while at work and injured his right ankle, leg and low back. The Office accepted the claim for herniated disc at L5-S1 and authorized a microlumbar discectomy. Appellant returned to work in a part-time,

light-duty position and on May 6, 1998 returned to full-time duty subject to various restrictions. He retired on August 1, 1998.

Appellant submitted various records dated April 24 to December 7, 1984 from Dr. Ruben J. Saez, a Board-certified orthopedist, who treated him for persistent right L5 radiculopathy, secondary to nerve entrapment by a protruding L4 disc. In a June 5, 1984 operative report, Dr. Saez performed a decompressive laminectomy at L4-5, microsurgical discectomy at L4-5 on the right and diagnosed protruded L4 disc with lateral stenosis on the right. Thereafter appellant came under the treatment of Dr. Steven K. Goodwin, a Board-certified orthopedist, who, in an operative report dated February 10, 1998, noted performing a right L5-S1 microlumbar discectomy and diagnosed disc herniation under the S1 nerve root. Appellant also submitted chiropractor reports dated March 30 to April 2, 1998 which noted his treatment for low back pain. A magnetic resonance imaging (MRI) scan of the lumbar spine dated April 17, 1998 revealed degenerative and postsurgical findings with some compression of the thecal sac at L5-S1. Appellant submitted a June 19, 1998 report from Dr. David Abel, a Board-certified orthopedist, who treated him in follow-up after a second discectomy and diagnosed residual neural injury resulting from recent disc herniation and from remote back problems. He was seen in consultation on February11, 1999 with Dr. Charles E. Brondos, a Board-certified neurologist, who determined that appellant had 10 percent impairment of the lumbosacral spine.

On March 2, 2002 appellant filed a CA-2a, a recurrence of disability alleging that in April 1998 he developed a recurrence of back pain causally related to the accepted work injury of September 18, 1997. On the same date, he submitted a claim for compensation for the period August 1, 1998 to February 20, 2002. Appellant submitted reports from Dr. Paula A. Lantsberger, Board-certified in preventative medicine, dated July 13, 2001 and January 18, 2002. Dr. Lantsberger noted a history of injury on September 18, 1997 and subsequent surgical treatment. She diagnosed history of lumbar disc disease at the lower lumbar level and epidural fibrosis as a result of the surgical interventions. Dr. Lantsberger indicated that appellant would not be a good candidate for surgery and opined that he could not work full time. In a report dated November 24, 2003, she diagnosed lumbosacral disc disease status post back surgeries and advised that he could not return to his previous position as an information receptionist, but he could return to work in another capacity subject to various restrictions.

In correspondence dated September 13, 2002, the Office accepted appellant's claim for a recurrence of disability commencing July 13, 2001.

In a decision dated November 24, 2003, the Office rescinded the September 13, 2002 decision and denied appellant's claim for a recurrence of disability filed on March 2, 2002.

On December 22, 2003 appellant requested an oral hearing before an Office hearing representative. The hearing was held on February 23, 2005. Appellant, through his attorney, submitted a brief and asserted that the Office erroneously rescinded the September 13, 2002 decision. He submitted an MRI scan of the lumbar spine dated January 9, 2004 which revealed a L3-4 mild disc bulge with mild facet degenerative changes, L4-5 disc protrusion with subligamentous herniation anteriorly and mild bulge posteriorly and a L5-S1 mild broad-based posterior disc bulge with moderate facet degenerative changes. Appellant also submitted

physical therapy notes. He came under the treatment of Dr. Karen Schaaf, a Board-certified family practitioner. In reports dated April 15 to October 21, 2004, Dr. Schaaf diagnosed low back pain, status post discectomy and radiculopathy.

By decision dated May 18, 2005, the hearing representative affirmed the November 24, 2003 decision.

On May 12, 2006 appellant requested reconsideration and provided a detailed history of his medical treatment. He contended that he continued to be disabled due to his work-related injury and that his disability prevented him from performing the job he held when he was injured. Appellant submitted duplicative copies of medical records from Dr. Saez, Dr. Abel, Dr. Brondos and Dr. Lantsberger. He submitted new physical therapy notes from March 9, 2004 to March 17, 2005. In reports dated March 17 to May 3, 2006, Dr. Schaaf treated appellant for a cancer spot on his face which was surgically removed. She diagnosed squamous cell excised, disequilibrium and low back pain from job-related injuries and surgeries. In a report dated May 3, 2006, Dr. Schaaf noted treating appellant since the spring of 2004 for low back pain and she recommended acupuncture and physical therapy. She advised that he had significant disability from back pain and was unable to sit or stand for more than five minutes.

By decision dated June 8, 2006, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions, nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[2] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> (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 Office]."

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b).

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.[3]

ANALYSIS

Appellant's May 12, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration asserted that he continued to be totally disabled due to his work-related injury. However, his letter did not show how 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 previously considered appellant's contentions about whether he sustained a recurrence of disability and whether he continued to have residuals of his work-related condition. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered, appellant submitted various medical records from Dr. Saez dated September 19 to December 7, 1984, Dr. Abel dated June 19, 1998, Dr. Brondos dated February 11, 1999, chiropractor reports from March 30 to April 2, 1998, an MRI scan dated April 17, 1998 and a report from Dr. Lantsberger dated July 16, 2003. However, this evidence was duplicative of that already and previously considered by the Office.[4] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant submitted new physical therapy notes from March 9, 2004 to March 17, 2005 addressing his treatment for chronic low back pain. The Board has held that

[3] 20 C.F.R. § 10.608(b).

[4] 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; *see Daniel Deparini,* 44 ECAB 657 (1993); *Eugene F. Butler,* 36 ECAB 393, 398 (1984); *Bruce E. Martin,* 35 ECAB 1090, 1093-94 (1984).

treatment notes signed by a physical therapist are not considered medical evidence as a physical therapist is not a physician under the Act.[5] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant also submitted new reports from Dr. Schaaf who treated him for squamous cell carcinoma, disequilibrium and low back pain. In a report dated May 3, 2006, Dr. Schaaf noted treating appellant since the spring of 2004 for low back pain and indicated that he underwent acupuncture and physical therapy without improvement. She advised that he had significant disability from back pain and was unable to sit or stand for more than five minutes. However, these reports are not relevant as they are duplicative to Dr. Schaaf's prior submitted reports dated April 15 to October 21, 2004 which were considered by the Office in its decision dated May 18, 2005. 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.[6] Therefore, this report is insufficient to require the Office to reopen the claim for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he constitute relevant and pertinent evidence not previously considered by the Office."[7] Consequently, he was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

[5] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[6] *See Daniel Deparini*, *supra* note 4.

[7] 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2006 is affirmed.

Issued: February 9, 2007
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