United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 06-2103**
	)	**Issued: February 12, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 August 7, 2006 appellant filed a timely appeal from an August 15, 2005 Office of Workers' Compensation Programs' nonmerit decision denying her request for reconsideration of the termination of her compensation and medical benefits. The Board's jurisdiction to consider final decisions of the Office extends only to final decisions issued within one year prior to the filing of the appeal.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of the claim.[2]

ISSUE

The issue is whether the Office abused its discretion in denying appellant's request for reconsideration.

[1] 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

[2] *See Algimantas Bumelis,* 48 ECAB 679 (1997); *Leon D. Faidley,* 41 ECAB 104 (1989).

FACTUAL HISTORY

On May 12, 2004 appellant, then a 33-year-old nurse, sustained a back sprain and muscle spasm with radiculopathy in the performance of duty after lifting a patient. On September 23, 2004 the Office accepted her claim for a recurrence of disability on June 30, 2004. On March 29, 2005 the Office terminated appellant's compensation and medical benefits. On June 27, 2005 the Office denied modification of its termination decision.

Appellant requested reconsideration and submitted additional evidence. On July 16, 2005 Dr. Thomas D. Kramer, an attending Board-certified orthopedic surgeon, stated that, in a previously submitted report dated September 2, 2004, he found that appellant was totally disabled due to her May 12, 2004 employment injury. On March 31, 2005 he performed a disc fusion at L5-S1.[3] On July 26, 2005 Dr. Kramer provided findings on physical examination and diagnosed status post lumbar decompression and fusion at L4-5 causally related to appellant's May 12, 2004 employment injury.

By decision dated August 15, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review.[4]

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[5] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.[6] When an application for review of the merits of a claim does not meet at least one of these

[3] The March 31, 2005 operative report indicates that the surgery was performed to treat degenerative disc disease at L4-5.

[4] Subsequent to the August 15, 2005 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b)(2).

requirements, the Office will deny the application for review without reviewing the merits of the claim.[7]

ANALYSIS

The merits of the Office's termination decision are not within the jurisdiction of the Board on this appeal. Therefore, the only issue on appeal is whether appellant submitted evidence or argument sufficient to warrant further merit review.

On July 16 and 26, 2005 Dr. Kramer stated that appellant was totally disabled due to her May 12, 2004 employment injury and related surgery on March 31, 2005. However, he made reference in explaining his opinion on causal relationship to a prior report of September 2, 2004, already considered by the Office.[8] Consequently, Dr. Kramer's reports and opinion do not constitute relevant and pertinent evidence not previously considered by the Office in its decision to terminate appellant's compensation. Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her claim.

CONCLUSION

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

[7] 20 C.F.R. § 10.608(b).

[8] Evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a claim. *See Ronald A. Eldridge*, 53 ECAB 218 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 15, 2005 is affirmed.

Issued: February 12, 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