United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 07-2269**
	)	**Issued: April 16, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Elgin, IL, 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 September 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 30, 2007 nonmerit decision denying her request for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. Because more than one year has elapsed between the Office's last merit decision of May 15, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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

FACTUAL HISTORY

This is the second time this case has been before the Board. By decision dated December 6, 2001, the Board affirmed the Office's November 19, 1999 decision terminating appellant's medical and compensation benefits as of December 5, 1999. The Board found that the evidence established that appellant did not have continuing disability or residuals causally related to her January 6, 1988 injury, which was accepted for left shoulder and neck strains and C6-7, T2 and T6 subluxations.[2] The facts and conclusions of law from that decision are incorporated herein by reference.

By letters dated December 2, 2002, October 24 and December 13, 2005, but received by the Office on April 13, 2006, appellant requested reconsideration. By decision dated May 15, 2006, the Office denied modification of the termination decision. It found that the evidence was insufficient to establish that appellant had any residuals from her accepted injury.

On May 13, 2007 appellant requested reconsideration, contending that the evidence of record established that her current condition was work related. Reiterating earlier arguments, appellant stated that it was too late for her to find a doctor to connect her current condition to her accepted injury. In support of her request, appellant submitted duplicates of documents previously received and considered by the Office, including: decisions and correspondence from the Office to appellant; reports from Dr. Chang Kang, a treating physician, for the period February 25, 1992 through March 24, 1995; correspondence and reports from Dr. Frank. L. Gamble, a chiropractor, for the period December 7, 1993 to June 15, 1999; September 30, 1999 reports from Dr. R. Sam Mayer, a treating physician; reports from Dr. Lynn Mershon, a Board-certified physiatrist, for the period March 12 through May 28, 2002; reports from Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, for the period June 2 through August 6, 1999; and reports from Dr. Kenneth Sanders, a Board-certified orthopedic surgeon, for the period January 5 through May 26, 1993.

Appellant also submitted a November 7, 2006 report from Dr. Mershon, who related appellant's complaints of increased left-sided neck pain and left trapezius pain. She described findings on examination and diagnosed left neck pain, upper thoracic back pain, mild right scapular winging, history of work injury, motor vehicle accident and head trauma, and chronic pain syndrome, with mild muscle tightness and spasm. Dr. Mershon noted that appellant was interested in obtaining an expert opinion as to whether there was a relationship between her current symptoms and her work injury. She declined to offer an opinion as to whether such a causal relationship existed. Dr. Mershon explained that, "due to the nature of [appellant's] case, the length of time since her injury, and the available record that [she had], as well as the fact that this is not something that [she does] on a regular basis, that [she] would prefer her to see an additional physician, who is quite experienced in this area, for their opinion."

By decision dated May 30, 2007, the Office denied appellant's request for reconsideration on the grounds that she neither raised substantive legal questions, nor included new and relevant evidence.

[2] Docket No. 00-956 (issued December 6, 2001).

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[3] Office regulations provide that the evidence or argument submitted by 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.[4] 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.[5] 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.[6]

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.[7] 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.[8]

ANALYSIS

Appellant's May 13, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted duplicates of physicians' reports and correspondence. As these documents were previously received and considered by the Office, they are cumulative and duplicative in nature.[9] The remaining evidence submitted consisted of a November 7, 2006 report from Dr. Mershon, who declined to offer an opinion as to whether there existed a causal relationship between appellant's current condition and the accepted injury. As the report offered no opinion on causal relationship, it is

[3] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b)(2).

[5] 20 C.F.R. § 10.607(a).

[6] 20 C.F.R. § 10.608(b).

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

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

[9] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

not relevant to the issue of this case.[10] As it does not address the reason for the Office's denial of appellant's claim, it is irrelevant and does not constitute a basis for reopening her case. The Board finds that these documents do not constitute relevant and pertinent new evidence not previously considered by the Office.[11] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her May 13, 2007 request for reconsideration.

CONCLUSION

The Board finds that 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).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2008
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

[10] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

[11] *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).