United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 08-681**
	)	**Issued: August 25, 2008**
DEPARTMENT OF THE NAVY, U.S. NAVAL BASE, Guantanamo Bay, Cuba, 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 January 3, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 5, 2007 merit decision terminating her compensation and an October 5, 2007 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective January 5, 2007 on the grounds that she had no disability due to her August 28, 2001 employment injury after that date; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that on August 28, 2001 appellant, then a 55-year-old supply systems analyst, sustained a comminuted left intertrochanteric hip fracture when she fell to the

ground from a stool on which she was standing.[1] On August 30, 2001 she underwent open reduction and internal fixation surgery of her left intertrochanteric hip fracture.[2] On December 9, 2003 appellant underwent a bone graft to the left femoral neck with removal of a compression tube and plate device from the left hip. On January 27, 2004 she had compression tube and plate fixation at the left femoral neck and on November 11, 2004 she underwent a conversion to total hip arthroplasty of the left hip with removal of hardware from the left hip. These procedures were authorized by the Office and the last three were performed by Dr. Gordon N. Cromwell, Jr., an attending Board-certified orthopedic surgeon.

In a September 15, 2005 report, Dr. Cromwell stated that appellant was nine months post a left total hip arthroplasty and was "doing extremely well." He indicated that she wished to return to work and believed that she could perform her previous position. Dr. Cromwell described the physical requirements of the supply systems analyst she held when injured on August 28, 2001 and stated:

> "With regards to a total hip replacement, the patient's strict limitations would be no squatting, crawling in tight places and to avoid carrying more than 50 to 60 pounds although that is not necessarily a strict limit in poundage. We encourage our patients to be active and to be aware of mechanical limitations of a hip replacement…. I believe that she has all the physical requirements and no physical limitations that would prevent her from working at this position, as it is described in these informational publications. Carrying office [personal computer] equipment should not entail, to the best of my knowledge, picking up or carrying more than 20 pounds at a time and, hence, she would fall well within any limits that I would place on her."

The record contains evidence indicating that appellant sustained a nonwork-related left ankle strain in early January 2006 and a nonwork-related left wrist fracture on or about January 20, 2006.[3] Appellant also had surgery in June 2006 for left carpal tunnel syndrome, a condition that is not accepted as employment related.

In a July 21, 2006 report, Dr. Cromwell stated that appellant was anxious to return to work and noted:

> "We had previously, in a letter of September 15, 2005, outlined [appellant's] work limitations with regards to her total hip arthroplasty. At that time, we had indicated that she should avoid carrying more than 50 [to] 60 pounds at a time.

[1] The record contains a job description which describes the supply systems analyst position as primarily sedentary with physical demands of some walking, stooping, standing and carrying of "office [personal computer] equipment and other light objects such as books and paper." The job involved tasks relating to information systems such as reviewing and analyzing programs and mission assignments, initiating and maintaining desk guides and other materials, and providing training and expertise.

[2] In an August 19, 2003 decision, the Office granted appellant a schedule award for 10 percent permanent impairment of her left leg.

[3] Appellant apparently underwent surgery for her left wrist fracture.

> [Appellant] has, however, had a physical capacities evaluation which, as I understand it, indicates that she has a lifting limit of 20 pounds.[4] The previously mentioned limitations with regards to total hip arthroplasty such as no squatting, crawling or work in tight places should continue permanently.
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> "[Appellant] has been unable to return to work since that letter of September 15[, 2005] because of intervening injuries. [She] fell in January 2006, sustaining a Colles' fracture with comminution requiring surgical procedure. In addition, [appellant] had previously sprained her left ankle in very early January 2006 and had a significant sprain of the ankle. She subsequently fell on January 20, 2006 and fractured her distal radius which required procedures. Most recently [appellant] has undergone a carpal tunnel release of the left hand and is healing nicely.
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> "[Appellant's] injuries as noted above are not related to her hip injury and subsequent surgery."[5]

In a November 16, 2006 notice, the Office advised appellant of its proposed termination of her disability compensation. It noted that Dr. Cromwell found that she was no longer totally disabled due to her August 28, 2001 employment injury.[6] The Office informed appellant that she had 30 days to submit evidence and argument if she disagreed with the proposed termination.

In a December 7, 2006 letter, appellant contested the proposed termination of disability compensation and stated, "I have not been offered a position with my previous employer nor given any priority consideration for vacancies with the agency." She indicated that her physician had limited her physical activities and consequently she was unable to perform her prior work.

In a January 5, 2007 decision, the Office terminated appellant's disability compensation effective January 5, 2007 on the grounds that she had no disability due to her August 28, 2001 employment injury after that date. It found that the termination was supported by the opinion of Dr. Cromwell.[7]

In an undated letter received by the Office on May 2, 2007, appellant requested reconsideration of the Office's January 5, 2007 decision. She argued that the reports of Dr. Cromwell did not establish that she could perform her prior work. Appellant asserted that

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[4] The record contains copies of functional capacity evaluations performed in January and March 2006. The evaluations indicated that appellant ostensibly had limitations on lifting but these limitations appear to have been due to her nonwork-related left arm conditions.

[5] In another July 21, 2006 report, Dr. Cromwell again indicated that appellant's nonwork-related conditions prevented her from returning to work.

[6] The Office stated that it was not proposing to terminate appellant's entitlement to medical benefits related to treatment of the August 28, 2001 injury.

[7] The Office considered appellant's argument that she should have been placed on a priority list for reemployment and rejected it as irrelevant.

she had not been placed on a priority list for reemployment. She submitted copies of documents that had previously been in the record.

In an October 5, 2007 decision, the Office denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,[8] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[9] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[10] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[11]

ANALYSIS -- ISSUE 1

The Office accepted that on August 28, 2001 appellant sustained a comminuted left intertrochanteric hip fracture due to a fall. She underwent four left hip surgeries between August 30, 2001 and November 11, 2004. The last three surgeries were performed by Dr. Cromwell, an attending Board-certified orthopedic surgeon.[12] At the time of her August 28, 2001 injury, appellant was working as a supply systems analyst. The job involved tasks relating to information systems such as reviewing and analyzing programs and mission assignments, initiating and maintaining desk guides and other materials, and providing training and expertise. It was primarily sedentary in nature with physical demands of some walking, stooping, standing and carrying of "office [personal computer] equipment and other light objects such as books and paper." Based on the opinion of Dr. Cromwell, the Office terminated appellant's disability compensation effective January 5, 2007.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Cromwell. The September 15, 2005 and July 21, 2006 reports of Dr. Cromwell establish that appellant had no disability due to her August 28, 2001 employment injury after January 5, 2007. Dr. Cromwell determined that appellant's August 28, 2001 employment injury did not prevent her from performing the supply systems analyst she held when she was injured on August 28, 2001. He extensively discussed the duties and physical requirements of the position and indicated that appellant was able to perform them. Dr. Cromwell advised that appellant could perform such activities as engaging in some walking, stooping, standing and carrying of office personal computer equipment and other light objects

[8] 5 U.S.C. §§ 8101-8193.

[9] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[10] *Id.*

[11] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[12] The last surgery resulted in a total hip arthroplasty of the left hip.

such as books and paper.[13] He noted that appellant should not engage in squatting, crawling or working in tight places, but properly indicated that the supply systems position did not require such activities.

The Board has carefully reviewed the opinion of Dr. Cromwell and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Cromwell's opinion is based on a proper factual and medical history.[14] He provided medical rationale for his opinion by explaining that appellant had undergone a successful recovery from her left hip surgeries. Dr. Cromwell also noted that he had reviewed the functional capacity evaluations from early 2006 and taken them into account in rendering his opinion. He further explained that the only conditions that would possibly prevent appellant from working were nonwork-related conditions, including the resolving conditions of left ankle sprain, left wrist fracture and left carpal tunnel syndrome.

For these reasons, the Office properly terminated appellant's compensation effective January 5, 2007.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[15] the Office's 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.[16] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[17] 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.[18] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[19] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[20]

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[13] Dr. Cromwell indicated that appellant could lift up to 20 pounds and properly noted that it did not appear that the supply systems analyst required lifting or carrying heavier objects.

[14] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[15] 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).

[16] 20 C.F.R. § 10.606(b)(2).

[17] 20 C.F.R. § 10.607(a).

[18] 20 C.F.R. § 10.608(b).

[19] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[20] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ANALYSIS -- ISSUE 2

In connection with her May 2, 2007 reconsideration request, appellant argued that the reports of Dr. Cromwell did not show that she could perform her prior work. The submission of this argument would not require reopening appellant's case for merit review because it is not relevant to the main issue of the present case which is medical in nature. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[21] Appellant is not qualified to provide a medical opinion and therefore her opinion is not relevant.[22] She also argued that she should have been placed on a priority list for reemployment, but the Office has already considered and rejected this argument. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[23] Appellant submitted copies of a number of documents, but these had previously been in the record.

Appellant has not established that the Office improperly denied her request for further review of the merits of its July 5, 2007 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not to 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 constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's disability compensation effective January 5, 2007 on the grounds that she had no disability due to her August 28, 2001 employment injury after that date. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[21] *See supra* note 20 and accompanying text.

[22] *See Arnold A. Alley*, 44 ECAB 912, 920-21 (1993) (finding that the opinions of nonphysicians are not relevant in evaluating medical matters).

[23] *See supra* note 19 and accompanying text. Moreover, appellant's argument regarding priority reemployment is irrelevant to the main issue of the present case.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 5 and January 5, 2007 decisions are affirmed.

Issued: August 25, 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