United States Department of Labor Employees' Compensation Appeals Board

R.R., Appellant)
and) Docket No. 08-1070
DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD,) Issued: August 25, 2008
Philadelphia, PA, Employer))
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge DAVID S. GERSON, Judge JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2008 appellant filed a timely appeal from a March 22, 2007 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the March 22, 2007 decision. The Board does not have jurisdiction over the merits of the claim.

<u>ISSUE</u>

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

FACTUAL HISTORY

On August 10, 1983 appellant, then a 31-year-old submarine propeller worker, sustained an acute lumbosacral sprain and peripheral neuropathy while in the performance of duty. On January 7, 1985 he sustained a neck sprain and strain and contusion of the left frontal parietal

bone of the skull while in the performance of duty. The case records for appellant's 1983 and 1985 claims have been combined.

On November 17, 2006 appellant filed a claim for a recurrence of disability on that date causally related to his August 10, 1983 employment injury.

By decision dated January 23, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability on November 17, 2006 causally related to his August 10, 1983 employment injury.

On March 12, 2007 appellant requested reconsideration. He did not submit any additional evidence or argument.

By decision dated March 22, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ 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 setting forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and new pertinent evidence not previously considered by the Office.² When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

ANALYSIS

Appellant requested reconsideration of the January 23, 2007 merit decision but provided no evidence or legal argument in support of his request. Neither did he contend that the Office

² 20 C.F.R. § 10.606(b)(2).

¹ 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(b).

erroneously applied or interpreted a specific point of law. Because appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law, advancing a relevant legal argument not previously considered or constituting relevant and new pertinent evidence not considered previously by the Office, which properly denied his request for reconsideration.

CONCLUSION

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

<u>ORDER</u>

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2007 is affirmed.

Issued: August 25, 2008 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

> David S. Gerson, Judge Employees' Compensation Appeals Board

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board