United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
	)	**Docket No. 08-1180**
and	)	**Issued: October 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 13, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' December 6, 2007 nonmerit decision denying his request for reconsideration of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's October 16, 2006 decision. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits.

FACTUAL HISTORY

On April 15, 1990 appellant filed an occupational disease claim alleging that his work duties caused or aggravated his neck and shoulder conditions. His claim was accepted for

chronic cervical and thoracic strain. Appellant returned to work in a limited-duty capacity on September 13, 1999.

In an August 5, 2004 work capacity evaluation, Dr. Diane Dakin, Board-certified in family medicine, stated that appellant could lift up to 40 pounds, with no overhand throwing or keying. She also limited his reaching overhead, and allowed pushing and pulling only intermittently.

On December 4, 2004 appellant was offered a limited-duty position sorting loose straps and towveyor monitor, relief bulk mail technician, and relief business mail entry unit dock clerk. The offer noted the August 5, 2004 medical restrictions of lifting up to 40 pounds, pushing and pulling intermittently, no reaching above the shoulder, no keying and working eight hours a day.

In a January 13, 2005 letter, the employing establishment requested that the Office make a suitability determination for the December 4, 2004 modified job offer.

A January 31, 2005 internal employing establishment memorandum noted that appellant came to work that day and requested written notice that the previous job had been abolished. The employing establishment noted that appellant's nonresponse to the job offer was seen as a rejection of the job offer. Appellant was being sent home on leave without pay pending the outcome of the suitability review.

On May 2, 2005 the Office informed appellant that the modified clerk position was found to be suitable to his work capabilities and that he had 30 days to either accept the position or provide an explanation of the reasons for his refusal. Appellant accepted the position and returned to work on May 27, 2005.

On October 5, 2005 appellant filed a claim for compensation for the period February 6 to May 26, 2005 due to "no work available pending suitability rating from the [Office]." On October 17, 2005 the Office requested additional evidence regarding the reason he stopped work.

In a November 9, 2005 letter, appellant stated that his absence from work was not due to any changes or difficulties in his job offer or medical condition. He explained that he was given a new job offer prior to the abolishment of his former job but when the former job was eventually abolished he was refused work hours until the Office rendered a suitability rating.

In an April 21, 2006 merit decision, the Office denied appellant's claim for compensation finding that the evidence was insufficient to support that he was disabled for work due to the March 13, 1990 injury. It found there was no evidence that the physical requirements of appellant's limited-duty job increased.

In a May 2, 2006 letter, appellant argued that his absence from work was a management decision and that the employing establishment did not controvert his claim.

On May 19, 2006 appellant requested an oral hearing. The hearing was held on August 8, 2006.

In an October 16, 2006 decision, an Office hearing representative denied appellant's claim for wage-loss compensation. The hearing representative found that appellant's prior light-duty position was abolished and he was offered a new light-duty job on December 7, 2004 which conformed to the physical restrictions provided by Dr. Dakin. The hearing representative also noted that appellant did not claim he could not perform the new light-duty position or that the position did not conform to his physical restrictions.

On October 15, 2007 appellant requested reconsideration arguing that he did not decline the modified job offer. He contended that until his previous position was abolished he was not required to accept, decline or consider the new modified position. Appellant also argued that when his current position was abolished in February 2005 management would not allow him to consider the new job offer until a suitability rating was rendered by the Office.

Appellant submitted additional documentation. In an August 13, 2007 letter, the employing establishment addressed a discrimination claim initiated on May 17, 2007. An April 9, 2007 progress note from Dr. Dakin was also submitted.

On December 6, 2007 the Office issued a nonmerit decision denying appellant's request for reconsideration on the grounds that the evidence was repetitious and no new evidence was submitted to support his claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[1]

Section 8128(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for review on the merits.[2] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[3] Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.[4]

[1] 20 C.F.R. § 10.606(b)(2)(i-iii).

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

[4] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

ANALYSIS

The Board finds that appellant has not met any of the criteria for reopening his case for review of the merits. Merit review was denied by the Office on the grounds that he did not submit new and relevant medical evidence or raise a new legal argument. Appellant did submit evidence but it does not address the issue of the case, *i.e.*, whether appellant was disabled from performing light duty which conformed to his physical restrictions.[5] The documents submitted consist of an August 13, 2007 letter from the employing establishment addressing a discrimination claim initiated on May 17, 2007 and an April 9, 2007 progress note from Dr. Dakin. Neither of these documents address the relevant issue and are therefore not considered to be new and relevant evidence. Additionally appellant did not argue that the Office erroneously applied or interpreted a specific point of law nor did he present a relevant legal argument not previously considered by the Office. He argued in his reconsideration request that in February 2005 the employing establishment would not allow him to consider the new job offer until a suitability rating was provided by the Office. However, appellant previously raised this argument and the Office has already considered it. Therefore, it is not a new legal argument which would require the Office to reopen the case for merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[5] The Office determined that the modified job offer was suitable on May 2, 2005 and appellant accepted the position on May 27, 2005. It was first offered to appellant as of December 4, 2004.