

An October 30, 2007 attending physician's report from Dr. Robert Kelley, Board-certified in family medicine, diagnosed tendinitis of the right wrist and forearm. The supervisor's portion of this report noted the date of injury as October 24, 2007 due to repetitive movement and jamming mail into small spaces. Dr. Kelley checked a box "yes" indicating that the history of injury provided by appellant corresponded to the information provided on the form by the supervisor.

On November 5, 2007 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional evidence.

On November 1, 2007 Dr. Kelley directed that appellant completely rest her arm, which she noted her work did not allow.

An undated statement from appellant's supervisor noted that appellant reported a swollen wrist on October 11, 2007. Appellant also reported that she previously injured the same hand working as a cashier clerk for a private company and that her physician informed her it might be inflamed. Her supervisor indicated that on October 24, 2007 appellant requested an occupational disease claim form for right wrist tendinitis. Appellant's supervisor also noted that on October 30, 2007 appellant submitted an occupational disease claim form and withdrew it later that day to submit a traumatic injury claim form for her right wrist condition.

In an undated statement, appellant alleged injury to her wrist, thumb and pinky while trying to case mail into small slots. She stated, "after jamming mail into my case the day after a holiday and then trying to lift normal trays with her wrist and finger, I could not take it anymore." Appellant also included a diagram of the slots in which she cased mail.

In a November 14, 2007 report, Dr. Kelley stated that appellant's date of injury was October 9, 2007. He indicated that he first treated her for wrist and forearm injury on October 11, 2007, two days after the incident. Dr. Kelley diagnosed wrist and forearm tendinitis. He found that appellant's condition was an overuse injury from repetitive motions of placing mail into cases and carrying mail. In a November 20, 2007 attending physician's report, Dr. Kelley diagnosed tendinitis and noted that appellant could return to light duty on November 1, 2007. The supervisor portion of that form indicated the date of injury was October 24, 2007 and the injury occurred from repetitive movement and jamming mail into spaces. A November 28, 2007 attending physician's report from Dr. Kelley diagnosed tendinitis and advised that appellant could return to regular duty. The supervisor portion of the form reiterated that the date of injury was October 24, 2007. In both reports, Dr. Kelley checked a box "yes" indicating that appellant's account of the injury corresponded to the one provided by her supervisor.

A physical therapy note dated November 2, 2007 indicated the date of injury was October 9, 2007. It also noted appellant's complaint of right arm pain that began after completing a shift on October 9, 2007 when someone incorrectly cased her mail.

In a December 13, 2007 decision, the Office denied appellant's claim finding the evidence was inconsistent regarding the date and manner in which the injury occurred.

Appellant requested an oral hearing on January 21, 2008. She subsequently submitted physical therapy notes dated between November 2 and December 7, 2007 as well as copies of reports already of record.

In a March 25, 2008 decision, the Office denied appellant's oral hearing request finding it was not timely filed and could be equally well addressed by requesting reconsideration.

In a May 28, 2008 letter, appellant requested reconsideration. She inquired why her claim had been denied. Appellant asserted that the record contained sufficient medical evidence from her treating physician to establish that an injury occurred. She also asserted that the record contained inconsistent dates of treatment based on the dates indicated by her physician and the March 25, 2008 decision.

In an August 14, 2008 decision, the Office denied appellant's reconsideration request without a merit review finding that she did not submit relevant evidence warranting reopening the case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), 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.¹ Section 10.608(b) of Office regulations provide 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 a review on the merits.²

ANALYSIS

The Office's December 13, 2007 decision denied appellant's claim on the basis that there were factual inconsistencies as to the date and manner of injury. On reconsideration, appellant submitted physical therapy notes dated between November 2 and December 7, 2007. This evidence while new, does not address the issue of whether she sustained a traumatic injury October 12, 2007. The underlying reason the claim was denied was due to inconsistencies in the factual evidence regarding how and when the claimed injury occurred. Therefore this evidence is not relevant to the particular issue involved and did not warrant a reopening of the case for merit review.³ Appellant also submitted physical therapy notes previously of record. The Board

¹ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

² *Id.* at § 10.608(b); *K.H.*, 59 ECAB ____ (Docket No. 07-2265, issued April 28, 2008).

³ *See E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009) (where the Board held that new evidence submitted upon a reconsideration request that does not address the pertinent issue is not relevant evidence); *Freddie Mosley*, 54 ECAB 255 (2002).

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.⁴

On reconsideration, appellant asserted that the record contained sufficient evidence to establish that her injury occurred as alleged. However, this assertion is broad and conclusory and does not constitute a new and relevant legal argument or advance a relevant legal argument not previously considered by the Office. Appellant also indicated that the record contained conflicting dates of treatment based on her treating physician's reports and the dates to which the claims examiner referred in the March 25, 2008 decision. As the particular issue in this case involves the inconsistencies in the factual evidence regarding when and how the claimed injury occurred, the fact that her treatment dates conflict, in the absence of any statement from appellant that purports to address and clarify the factual inconsistencies, is not relevant to the underlying issue. Moreover, the March 25, 2008 decision found that appellant filed an untimely request for an oral hearing and did not discuss the dates she sought treatment or address in any manner the merits of her claim.

Consequently, appellant's reconsideration request does not demonstrate that the Office erroneously applied or interpreted a specific point of law, does not advance a relevant legal argument not previously considered by the Office, and was not accompanied by relevant and pertinent new evidence not previously considered by the Office.

On appeal, appellant asserts that the correct date of injury is October 9, 2007, which was reflected in her statements and treating physician's reports. She further asserts that her supervisor incorrectly reported her date of injury. The Board notes that appellant's assertions on appeal deal with the merits of her claim. The Board does not have jurisdiction over the merits of the claim and may only consider whether the evidence and arguments submitted on reconsideration warrant reopening the claim for further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without a merit review.⁵

⁴ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

⁵ The Board notes that appellant submitted new evidence after the Office issued its decision. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 14, 2008 is affirmed.

Issued: February 4, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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