United States Department of Labor
Employees' Compensation Appeals Board

ANDREW MICHRINA, Appellant	)	
and	)	
U.S. POSTAL SERVICE, POST OFFICE, Oxnard, CA, Employer	)	**Docket No. 06-279** **Issued: April 14, 2006**

Appearances:
Andrew Michrina, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 15, 2005 appellant filed a timely appeal of the August 17, 2005 decision of the Office of Workers' Compensation Programs which denied further merit review. Because more than one year has elapsed between the most recent merit decision dated May 18, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On November 12, 2001 appellant, then a 54-year-old tool and parts clerk, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome, right shoulder impingement syndrome and an emotional condition while in the performance of duty.[1]

In support of his claim, appellant submitted a report from Dr. James M. Herman, a Board-certified neurologist, dated September 21, 1998. He diagnosed bilateral stenosis at C6-7. An electromyogram (EMG) dated August 27, 2001 revealed moderate compromise of the bilateral ulnar nerves at the cubital tunnel. Also submitted were reports from Dr. Lorenzo Walker, a Board-certified orthopedic surgeon, dated August 29, 2001 to March 6, 2002. He noted treating appellant for work-related bilateral carpal tunnel syndrome and right shoulder impingement. In a report dated March 6, 2002, Dr. Walker diagnosed bilateral cubital tunnel syndrome, left carpal tunnel syndrome, right shoulder pain secondary to impingement, history of cervical spondylosis, lumbar disc disease and stress.

By letter dated January 7, 2002, the Office requested additional information from appellant noting that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a statement from Dr. Katherine Hamilton, a psychologist, dated December 31, 2001, who treated appellant since October 29, 2001 for adjustment disorder with mixed depression and anxiety. She opined that stressors in the workplace, including a problematic relationship with his supervisor and physical disabilities due to his cervical and lumbar degenerative disease and shoulder condition, gave rise to appellant's psychiatric symptoms. The physician advised that appellant was totally disabled.

On May 14, 2002 the Office accepted appellant's claim for bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and right shoulder impingement.

By letter dated January 28, 2003, the Office requested additional information from appellant, noting that the medical evidence submitted was insufficient to establish his claim for cervical, back and psychiatric conditions. The Office again requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed conditions and specific employment factors.

Appellant submitted a February 13, 2002 report from Dr. Walker, who noted a history of appellant's work-related conditions and that appellant injured his right side in 1982 and left wrist

[1] Appellant filed the following claims for disability: file number 13-437716 for an injury sustained on January 7, 1975; file number 13-0443061, which was accepted for a lumbar strain sustained on March 8, 1975; file number 13-588605, for an injury sustained on August 28, 1979; file number 13-0590619, which was accepted for an upper back muscle strain sustained on September 21, 1979; file number 13-0684964, which was accepted for temporary aggravation of cervical degenerative disc disease and cervical sprain resolved as of August 31, 1982; file number 13-0686855, which was accepted for a low back muscle strain resolved; and file number 13-1162416, which was denied by the Office.

in 1996. He diagnosed carpal tunnel syndrome, bilateral cubital tunnel syndrome, right shoulder impingement, history of cervical spondylosis from 1982, history of lumbar disc disease from 1982, stress, nonindustrial diabetes mellitus and left ganglionectomy. The physician opined that appellant's job duties, including constant gripping, frequent pulling, pushing and lifting, and repetitive use of a calculator and computer caused him to develop carpal tunnel syndrome, cubital tunnel syndrome and right shoulder impingement. With regard to the cervical and lumbar disc disease, Dr. Walker generally referred to reports prepared by a "Dr. Herman" in 1996 and 1998 and which allegedly noted an industrial component in the development of these conditions. Dr. Walker opined that the cervical strain was caused by appellant's difficulty in maintaining his head posture while working on a computer. He would not comment on the causal relationship of the stress condition to appellant's work, noting that this was out of his area of expertise. In reports dated September 3, 2002 to March 11, 2003, it was noted that an EMG revealed mild irritation of the C6 nerve root causing clawing of appellant's hands and arms and advised that appellant remained totally disabled.

By decision dated July 3, 2003, the Office found that the medical evidence of record failed to demonstrate that appellant sustained a lumbar, cervical or emotional condition in the performance of duty.

In a letter dated July 28, 2003, appellant requested an oral hearing before an Office hearing representative. The hearing was held on February 25, 2004. Appellant submitted reports from Dr. Walker dated June 3 to November 25, 2003, who noted that appellant's neurological symptoms were worsening. He indicated that a magnetic resonance imaging (MRI) scan of the right shoulder dated September 8, 2003 revealed a full thickness rotator cuff tear involving the supraspinatus tendon, subscapularis tendinosis with possible partial tears and possible biceps tendinosis. Dr. Walker recommended surgical intervention and advised that appellant was totally disabled.

In a decision dated May 18, 2004, the hearing representative affirmed the July 3, 2003 decision.

By letter dated May 18, 2005, appellant through his attorney requested reconsideration. Appellant asserted that Dr. Walker's report of February 13, 2002 was sufficient to establish that his cervical and lumbar conditions were work related and contended that the Office failed to provide an explanation for its decision to deny acceptance of these conditions. He indicated that the Office did not properly explain why appellant's emotional injury was not work related and failed to further develop the medical evidence with regard to this issue. Appellant submitted reports from Dr. Walker dated June 30, 2004 to March 8, 2005. Dr. Walker noted appellant's continued complaint of neck and shoulder pain and recommended repair of the right rotator cuff tear. He advised that appellant continued to be totally disabled.

By decision dated August 17, 2005, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,[2] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[3] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[4]

ANALYSIS

Appellant's request for reconsideration asserted that Dr. Walker's report of February 13, 2002 was sufficient to establish that his cervical and lumbar conditions were work related. Appellant further asserted that the Office did not properly explain why his emotional injury claim was not accepted as work related and failed to further develop the medical evidence with regard to this issue. However, appellant's letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office had previously considered Dr. Walker's reports in relation to appellant's claim. Appellant did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law with regard to Dr. Walker's reports. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted medical reports from Dr. Walker dated June 30, 2004 to March 8, 2005. However, these reports are not relevant because they do not specifically address the issue of whether the diagnosed cervical, lumbar and emotional conditions are causally related to specific employment factors. Moreover, these reports are similar to his prior reports already contained in the record and previously considered by the

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b).

[4] 20 C.F.R. § 10.608(b).

Office.[5] The Office properly determined that this evidence did not constitute a basis for reopening the case for further merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."[6]

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his May 18, 2005 request for reconsideration.[7]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2005 is affirmed.

Issued: April 14, 2006
Washington, DC

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

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

[5] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[6] 20 C.F.R. § 10.606(b).

[7] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).