

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. YOUNGS and DEPARTMENT OF THE ARMY,
DUGWAY PROVING GROUND, Dugway, UT

*Docket No. 00-2342; Submitted on the Record;
Issued June 4, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On November 20, 1997 appellant, a 40-year-old former environmental protection specialist, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that his diagnosed condition of Hepatitis C and chronic liver disorder had progressively worsened as a result of exposure to chemical and biological toxins while in the performance of duty.¹ The employing establishment submitted evidence refuting appellant's claimed occupational exposure.

By decision dated March 30, 1998, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury as alleged. The Office specifically found that the weight of the evidence indicated that appellant did not have any toxic exposure as alleged.

Appellant subsequently requested an oral hearing, which was conducted on March 4, 1999. By decision dated April 15, 1999, the Office hearing representative affirmed the prior decision dated March 30, 1998.

On April 10, 2000 appellant filed a request for reconsideration. The request was accompanied by a series of news articles regarding hazardous waste disposal at the employing establishment. Appellant also submitted a January 12, 1998 report from Dr. Gary R. Monash, a gastroenterologist and a September 9, 1994 report from Dr. George R. Russell, a dermatologist. Lastly, appellant submitted a U.S. Environmental Protection Agency (EPA) biennial report

¹ Appellant indicated that he began working for the employing establishment in April 1994 and was first diagnosed with Hepatitis C in December 1994. He further indicated that he had been advised as early as 1987 of the presence of Hepatitis antibodies in his system. The employing establishment terminated appellant's employment effective September 7, 1995 for falsification of government documents.

indicating that, for reporting year 1995, 157 tons of waste was shipped to the employing establishment.

By decision dated May 2, 2000, the Office denied appellant's request for reconsideration without addressing the merits of his claim.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(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 a review on the merits.³

Appellant's April 10, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Appellant's request for reconsideration is essentially a summary of the news articles that accompanied his request. 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, as previously noted, appellant submitted a 1995 EPA report regarding waste disposal and several news articles describing the conditions at the employing establishment. This evidence, however, does not specifically address appellant's claimed exposure. The issue on reconsideration is not whether hazardous waste materials were ever deposited at the employing establishment, but whether appellant was exposed to any such hazards during his relatively brief period of employment in 1994 and 1995. Because the various news articles and the 1995 EPA report do not specifically address the relevant issue on reconsideration, this evidence does not warrant reopening the claim for a merit review.⁴ Additionally, Dr. Russell's September 9, 1994 report diagnosing chronic dermatitis is silent on the issue of appellant's claimed occupational exposure. Lastly, Dr. Monash's January 12, 1998 report does not include an opinion as to the cause of appellant's Hepatitis C. He indicated that appellant was uncertain as to how he developed his condition. Dr. Monash also noted appellant's feeling that his work "as an inspector at a chemical plant in Utah where they bulldozed laboratories and were doing animal experiments" was the source of his Hepatitis C. Inasmuch as Drs. Russell and Monash did not offer an opinion as to the cause of appellant's

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

diagnosed conditions, their respective opinions are similarly insufficient to warrant reopening the claim for a merit review.⁵ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's April 10, 2000 request for reconsideration.

The May 2, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 4, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *Id.*