

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHERYL L. BRYANT and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT ADMINISTRATION, McAlester, OK

*Docket No. 00-781; Submitted on the Record;  
Issued March 1, 2001*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's July 13, 1999 request for reconsideration.

On September 2, 1992 appellant, then a 39-year-old informant cooperating in a drug bust, sustained an injury while in the performance of her duties. The Office accepted her claim for the conditions of lumbar strain, contusion to the left hip and abrasions to both feet. In a decision dated September 8, 1993, the Office found that appellant failed to establish that she was disabled for work as a result of her accepted injury.

On June 16, 1996 appellant filed a claim asserting that she sustained a recurrence of disability on July 1, 1993 as a result of her September 2, 1992 employment injury. She explained that the date of disability was about the time she realized that she needed surgery.

In a decision dated August 15, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the work incident of September 2, 1992 and the claimed condition or disability. On September 15, 1997 an Office hearing representative affirmed the denial of appellant's claim.

On July 17, 1998 the Office denied modification of its prior decision. The Office noted that appellant had submitted either insufficient medical evidence or no medical evidence at all regarding preexisting or subsequent injuries, including an automobile accident in Oklahoma in approximately 1982; an automobile accident in Arkansas in 1991; an injury as a machinist in January 1993; and an automobile accident in Florida in 1994. The Office found that medical opinions submitted to support appellant's claim were of limited probative value because it was not known whether the physicians were privy to any medical records for prior injuries or were aware of all the intervening injuries.

On July 13, 1999 appellant requested reconsideration. In support thereof she submitted physical therapy records, treatment records and medical notes from 1993, as well as treatment records from June 17, 1991.

In a decision dated October 13, 1999, the Office denied appellant's request for reconsideration without reviewing the merits of her claim. The Office found that appellant presented no argument for error and that the evidence was not relevant to the employment injury of September 2, 1992.

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against the payment of compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his 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."<sup>1</sup>

Section 10.606(b) of Title 20 of the Code of Federal Regulations provides that an application for reconsideration, including all supporting documents, must (1) be submitted in writing and (2) set forth arguments and contain evidence that either (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.<sup>2</sup>

Appellant's July 13, 1999 request for reconsideration does not meet the criteria set forth in section 10.606(b). The request does not show 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 does not contain relevant and pertinent new evidence not previously considered by the Office. In its July 17, 1998 decision on the merits of appellant's claim, the Office explained that the medical opinion evidence was deficient because it was not known whether the physicians who rendered the opinions were knowledgeable about appellant's other injuries. The point was that medical records relating to these other injuries should be made available to the opining physicians so that they may base their opinions on a sufficiently complete and accurate factual and medical background. It is the opinion of these physicians, not the background records themselves, that is relevant to the issue of causal relationship. Evidence that does not address the particular issue involved -- in this case, whether appellant sustained a

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b).

recurrence of disability on or about July 1, 1993 as a result of her September 2, 1992 employment injury -- constitutes no basis for reopening a case.<sup>3</sup>

Because appellant's request for reconsideration failed to meet at least one of the criteria set forth in section 10.606(b) for obtaining a merit review of her claim, the Office properly denied her request.

The October 13, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
March 1, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).