

**United States Department of Labor
Employees' Compensation Appeals Board**

LUCY G. RAMDEHAUL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Long Island City, NY, Employer**

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**Docket No. 04-79
Issued: February 25, 2004**

Appearances:
Bruce D. Cohen, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 29, 2003 appellant's counsel filed a timely appeal of the June 20, 2003 decision of the Office of Workers' Compensation Programs, which denied appellant's May 5, 2003 request for reconsideration. The Office previously issued a merit decision on June 1, 2002 that denied appellant's claim for recurrence of disability. As more than one year has elapsed between the issuance of the last merit decision and the filing of the instant appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board does not have jurisdiction over the merits of appellant's claim. Accordingly, the only decision currently before the Board is the Office's June 20, 2003 decision denying reconsideration.¹

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ Appellant's counsel submitted additional medical evidence on appeal. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

On December 6, 1989 appellant, then a 37-year-old mail supervisor, sustained a traumatic injury to the front of the head while in the performance of duty. The Office accepted appellant's claim for cerebrospinal fluid (CSF) rhinorrhea and the Office authorized surgery to correct appellant's CSF leak, which she underwent on January 29, 1990. She developed left superior oblique palsy as a result of her January 29, 1990 surgery and the Office also accepted this condition. Appellant was released to resume her regular duties effective May 1, 1990.

In June 2001 appellant was again diagnosed with a CSF leak. Dr. Eric M. Genden, an otolaryngologist, performed an endoscopic examination on June 26, 2001 and CSF leak. He determined that appellant was totally disabled beginning June 15, 2001. On June 18, 2001 appellant filed a notice of recurrence of disability, alleging that she sustained a recurrence of disability on June 15, 2001 causally related to her December 6, 1989 employment injury. Appellant stated that she awoke around 2:00 a.m. due to a collection of fluid in her throat and noticed that her pillow and nightgown were soaked. She further stated that, when she leaned forward, clear fluid flowed out of her left nostril. Appellant explained that she recognized the CSF leak from the original 1989 presentation and recalled that her original surgeon mentioned that in some cases the CSF leak recurs.

On September 27, 2001 the Office requested additional factual and medical evidence from appellant to support her claimed recurrence of disability. Appellant submitted an October 9, 2001 statement, her June 15, 2001 Mount Sinai Hospital emergency room treatment records and the medical records pertaining to her June 18 to 29, 2001 hospitalization at Mount Sinai. Appellant also submitted an October 4, 2001 attending physician's report (Form CA-20) from Dr. Genden, who diagnosed "R/O CSF leak" and noted a prior history of "head trauma 1990." Additionally, Dr. Genden responded "no" to the question of whether the condition was caused or aggravated by employment activity. He also indicated that appellant could resume light duty on October 15, 2001 and advised that she should not lift more than 10 pounds. In a narrative report dated October 6, 2001, Dr. Genden similarly reported that appellant had a history of head trauma sustained in 1990 and that she subsequently acquired a CSF leak. He further stated that nearly 10 years later appellant presented in June 2001 with a recurrent cerebrospinal leak. Dr. Genden noted that appellant was treated conservatively between June 15 and 29, 2001 and followed conservatively since then. He also stated that she was now doing well and able to return to work as of October 4, 2001, with the restriction that she not lift more than 10 pounds. Appellant returned to full duty on May 16, 2002.

In a decision dated June 1, 2002, the Office denied appellant's claim for recurrence of disability. Appellant requested reconsideration on May 5, 2003. By decision dated June 20, 2003, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

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

ANALYSIS

In her May 5, 2003 request for reconsideration, appellant described the difficulty she encountered in obtaining a report from her doctor. She also stated that all the physicians who recently reviewed her case at the hospital told her that her current condition was directly related to her prior injury. Appellant's May 5, 2003 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. Consequently, appellant is not entitled to a review of the merits of her 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 did not submit any additional evidence with her May 5, 2003 request for reconsideration. Inasmuch as appellant did not submit any "relevant and pertinent new evidence," she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2). As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's May 5, 2003 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's May 5, 2003 application for reconsideration without reopening the case for a review on the merits.

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member