

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

NICY TENNESSEE, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, New Orleans, LA, Employer**

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**Docket No. 05-613
Issued: August 2, 2005**

Appearances:
Nicy Tennessee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 18, 2005 appellant filed a timely appeal from nonmerit Office of Workers' Compensation Programs' decisions dated March 24 and August 27, 2004. The most recent merit decision was dated April 23, 2003. Because more than one year has elapsed since the most recent merit decision and the filing of this appeal on January 18, 2005 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 refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The case has previously been before the Board. By decision dated April 23, 2003, the Board affirmed the Office's March 14, 2002 decision denying modification of its July 23, 2001

decision and its September 25, 2002 decision denying appellant's March 23, 2002 request for reconsideration. The facts of the case as set forth in the Board's April 23, 2003 decision are herein incorporated by reference.¹

In undated letters received by the Office on February 9 and 11, 2004 appellant sought further reconsideration of her claim. In the letter received on February 9, 2004, appellant stated that several months after the Board's April 23, 2003 decision she asked the Board to reopen her case and that she be given reconsideration. Appellant noted that she had not received a response from the Board regarding her request. She asserted that she was injured while working alone caring for 19 total care patients which was an unauthorized assignment and which would have injured anyone.

In the letter received on February 11, 2004, appellant stated that she had a prior injury in 1997 while attempting to bring a large patient onto the medical ward in a broken stretcher. She related that her doctor prepared a report at this time noting a 1997 date of injury. Further, she noted problems with that injury on April 5, 2001. Appellant also related medical treatment for her dizziness and transient ischemic attacks on about November 9, 2000 which she associated with caring for 19 total care patients and their families. Appellant questioned whether she should have filled out a Form CA-1 at that time. She further explained that on March 9, 2001 she had to pick up a patient every 10 minutes which her doctor believed caused her condition. Appellant asserted she performed full-time work of caring for total care patients, which was inconsistent with her limited-duty restrictions, and which caused a second injury on April 5, 2001. She explained that her employing establishment's health office did not allow her to file claims for injuries at various times, but on this occasion, April 5, 2001, she demanded a Form CA-1. Nonetheless, a clerical staff input a random date of injury in order to finish her work for the day. Appellant stated that the correct date was April 5, 2001. She stated that she suffered financial loss from May 23 to July 24, 2001 and that working light duty was difficult as she was required to work on a 60 patient ward.²

By decision dated March 24, 2004, the Office denied her request for reconsideration without reviewing the merits of her claim on the grounds that insufficient evidence was submitted.

Appellant again requested reconsideration in a letter dated July 7, 2004. Appellant stated that reports from her physical therapist should have been submitted in her claim; she also stated that it was hard to do her job in that she had pain in her back that worsened when the ward was short staffed. Appellant argued that she should be compensated for the two months she was out of work based on her work-related injury.

¹ Docket No. 03-794 (issued April 23, 2003).

² The letters received on February 9 and 11, 2004, also addressed to the Board requested that the Board reopen her case. However, the Board's decision in 03-794 became final 30 days after issuance of the April 23, 2003 decision. *See* 20 C.F.R. § 501.6(d).

The Office denied appellant's request in a nonmerit decision on August 27, 2004 on the grounds that her request for reconsideration neither raised substantive legal questions nor included new and relevant evidence to warrant a reopening of her claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

In support of her requests for reconsideration, appellant offered assertions regarding her claim, attempted to clarify the circumstances surrounding her 1997 injury, her November 9, 2000 episode of dizziness, and her March 9 and April 5, 2001 work-related incidents. However, appellant did not submit new evidence to support her requests for reconsideration.

The underlying issue of the present case is whether appellant submitted sufficient medical evidence to show that she sustained an employment-related injury on April 5, 2001. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ Appellant submitted no medical evidence in either request for reconsideration to support her claim that she sustained a work-related injury on April 5, 2001. Moreover, in neither of her requests for reconsideration did she articulate a relevant new legal contention which has a reasonable color of validity.⁸

In her requests for reconsideration, appellant attempted to clarify her dates of injury with explanations regarding the causes of those injuries. Appellant also argued that she arranged to submit physical therapy notes and a medical report.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ See *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ See *John F. Critz*, 44 ECAB 788, 794 (1993).

The Board finds that appellant's assertions are not a relevant legal argument. Her claim was denied on the basis that she had failed to establish a causal relationship between the alleged employment injury and her diagnosed condition. This underlying issue is medical in nature and requires the submission of medical evidence addressing causal relationship between her employment duties and her claimed injury. While appellant noted in her July 7, 2004 letter that she had her doctor submit a medical report, no new medical evidence was submitted with the reconsideration requests.

Appellant has not established that the Office improperly refused to reopen her claim for further review on the merits under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions Office of Workers' Compensation Programs dated August 27 and March 24, 2004 are affirmed.

Issued: August 2, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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