United States Department of Labor
Employees' Compensation Appeals Board

DONNA L. SHAHIN, Appellant	)	
and	)	**Docket No. 05-622**
	)	**Issued: February 9, 2006**
DEPARTMENT OF DEFENSE, UNIFORMED SERVICES UNIVERSITY, Bethesda, MD, Employer	)	

Appearances:
Subhi H. Shahin, for the appellant
Paul J. Klingenberg, Esq., for the Director

Oral Argument January 18, 2006

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 21, 2004 appellant filed a timely appeal from the October 21, 2004 nonmerit decision of the Office of Workers' Compensation Programs, which denied her July 27, 2004 request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the nonmerit denial of appellant's request. The Board has no jurisdiction to review the merits of her claim for an attendant's allowance.

ISSUE

The issue is whether the Office properly denied appellant's July 27, 2004 request for reconsideration.

FACTUAL HISTORY

The last merit decision in this case is the Board's April 24, 2000 decision finding that appellant did not establish her entitlement to an attendant's allowance. The Board also found

that the Office properly denied her request for at least 120 days of full-time day treatment.[1] In a decision dated December 23, 2003, the Board found that the Office properly denied appellant's April 10, 2001 request for reconsideration.[2]

On July 27, 2004 appellant again requested reconsideration. She noted no history of prior psychological problems or indication of preexisting personality disorder. Appellant argued that the statute did not limit coverage for an attendant's allowance to those who were physically so helpless as to require constant attendance; it also covered those who were mentally so helpless. She contended that she had sustained a consequential injury, in that she experienced complex medical problems due to her medication treatment. Appellant asked the Office to approve an attendant's allowance from 1992 to the present and to recognize her consequential injury. His representative added that appellant started taking Zyprexa in February 1997 and quickly put on 35 to 40 pounds.

Appellant submitted, among other things, a March 15, 2004 report from Dr. Karen C. Alleyne, her attending psychiatrist, who reported that appellant's diagnoses included major depression (prolonged depression reaction in the International System) and post-traumatic stress disorder (PTSD). She stated that appellant's current symptoms and diagnoses related directly to her original injury in 1987, as follows:

> "All recurrences of depression and PTSD symptoms are triggered by circumstances that are reminders of her previous trauma as described in earlier reports. Nightmares and intrusive memories are of the traumatic relationship with her former supervisor, and former excessive job duties involving the killing of animals. Because of continued depression, anxiety, flashbacks, nightmares and avoidant behaviors, [appellant] is totally unable to work.
>
> "The primary symptom that prevents recovery for [appellant] is the need to avoid sights and smells that cause flashbacks. From her perspective, the world is a landmine of reminders of her previous trauma. This renders her unable to go out, to go into certain types of buildings, or to be near certain odors."

Dr. Alleyne reported that appellant was presently unable to return to any kind of work. She recommended intensive cognitive, behavioral and psychosocial retraining; a daily psychosocial rehabilitation program for at least a year to achieve possible partial recovery.

[1] Docket No. 97-1895 (issued April 24, 2000), *petition for recon. denied*, Docket No. 97-1895 (issued December 8, 2000) (order denying petition for reconsideration and denying request for a hearing).

[2] Docket No. 02-1597 (issued December 23, 2003), *petition for recon. denied*, Docket No. 02-1597 (issued April 6, 2004).

Appellant also submitted a June 29, 2004 report from Dr. Deborah R. Weinreich, Board-certified in family medicine, who noted that appellant had been a primary care patient in her office since 1990. She stated:

> "In 1989 [appellant] suffered the onset of acute schizoaffective disorder and severe depression due to work exposures. Her psychiatric condition has remained a major concern, and requires treatments whose side effects additionally complicate her medical condition.
>
> "Due at least in part to her weight and her medication, [appellant's] diabetes is uncontrolled and she has developed cardiac disease. She was hospitalized at Holy Cross Hospital May 26, 2004 with new onset atrial flutter. She remains under the cardiologic care of Dr. David Grossberg.
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> "From February 1997 until November 2003, [appellant] was treated with Zyprexa, a medication which causes obesity and can precipitate and complicate diabetes -- a condition from which she suffers. [Appellant] now weighs 296 pounds and is essentially disabled by her massive weight. She currently requires assistance from the most basic activities of daily living: getting out of bed or low chairs; cleaning herself after using the toilet; showering; dressing (especially undergarments, socks and shoes). Furthermore, she requires assistance in monitoring her weight, blood glucose levels and medications. Her husband, Subhi Shahin has been required to provide all needed assistance since 1990.
>
> "It would be most helpful if additional assistance could be provided for this unfortunate patient."

In a decision dated October 21, 2004, the Office denied appellant's July 27, 2004 request for reconsideration. The Office found that the evidence submitted was cumulative and repetitive and did not advance any law or fact not previously considered by the Office. Further, the Office found that the case file lacked the needed medical evidence "to advance the claimant's contention of attendant allowance necessity as required by the Federal Employees' Compensation Act." The Office concluded that the evidence submitted in support of appellant's request was not sufficient to warrant further review of the case.

LEGAL PRECEDENT

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[3] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[4]

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.605 (1999).

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[5]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[6] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[7]

ANALYSIS

The Board has carefully considered appellant's July 27, 2004 request for reconsideration and finds that it fails to meet any of the standards noted above for obtaining a merit review of her case.[8]

The request does not show that the Office erroneously applied or interpreted a specific point of law. On March 1, 2000 the Board fully reviewed the Office's denial of an attendant's allowance and found that the denial was proper under the law. On December 8, 2000 the Board affirmed the denial of appellant's petition for reconsideration, finding that it failed to establish an error of fact or law warranting further consideration. The Office has issued no further merit decision in the matter. Appellant's current request for reconsideration does not meet the first standard for obtaining a merit review of her case, and she may not use this request as a vehicle for again petitioning the Board to reconsider its March 1, 2000 decision.[9]

Appellant contends that the medication she was taking for her employment injury has caused a consequential injury, which in turn has made her so helpless as to require constant

[5] *Id*. at § 10.606.

[6] *Id*. at § 10.607(a).

[7] *Id*. at § 10.608.

[8] Although appellant's request comes four years after the last merit decision in this case, the Office reviewed the request as though it were timely filed. At the January 18, 2006 oral argument before the Board, the Director of the Office acknowledged that this mistake was to appellant's benefit because the applied legal standard was lower and substantially easier to meet than the legal standard for untimely requests.

[9] *See* 20 C.F.R. § 10.501.6(c)-(d). The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board. The decision of the Board shall be final upon the expiration of 30 days from the date of the filing of the order, unless the Board shall in its order fix a different period of time or reconsideration by the Board is granted.

attendance under 5 U.S.C. § 8111(a). She submitted a June 29, 2004 report from Dr. Weinreich, her family physician, to support that she now requires assistance for the most basic activities of daily living -- such as getting out of bed or low chairs, cleaning herself after using the toilet, showering and dressing -- as a result of the medication used to treat her work-related psychiatric condition. The prior Office decision of October 24, 2004 did not address the question of whether appellant sustained a consequential injury. As such, this contention has not been adjudicated by the Office below and is not properly before the Board on this appeal as there is no final decision. The contention raised on appeal is that she requires constant attendance not as a direct result of her accepted primary injury, but as a result of a consequential injury. The problem with this legal argument is that it makes such an attendant's allowance conditional on the acceptance of a consequential injury, which the Office has not yet adjudicated. While the Office could make a finding at some point in the future that a consequential injury has rendered appellant so helpless as to require constant attendance, her legal argument and the supporting medical opinion from Dr. Weinreich are not currently relevant to the basis of the Office's prior denial. Relevance under 20 C.F.R. § 10.606 (1999) must be defined by the merit decisions that have been issued to date. Because appellant's claim of a consequential injury has no bearing on the prior merit decisions, the Board finds that her legal argument and supporting medical opinion do not meet the second or third standard for obtaining a merit review of her case. The Board has held that evidence that does not address the particular issue involved constitutes no basis for reopening a case.[10]

The Board has also held that evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[11] Most of what appellant submitted with her July 27, 2004 request for reconsideration repeats or duplicates evidence already in the record. The March 15, 2004 report of her attending psychiatrist, Dr. Alleyne, does not address whether appellant is so helpless as to require constant attendance, so it is not relevant to the underlying issue. Further, the Board notes that no ruling has been made in this case that 5 U.S.C. § 8111(a) applies only to physical injuries. Appellant's argument that it covers mental injuries as well is misdirected and not relevant to the Office's denial of an attendant's allowance.

Because appellant's July 27, 2004 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her case, the Board will affirm the Office's October 21, 2004 decision denying her request.

CONCLUSION

The Board finds that the Office properly denied appellant's July 27, 2004 request for reconsideration.

[10] *See Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[11] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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