

On March 16, 1998 appellant, then a 31-year-old letter carrier, filed a claim of traumatic injury, Form CA-1, alleging that she was bitten by a dog while in the performance of duty. The Office accepted her claim for a dog bite on the right lower leg and provided appropriate benefits. On July 1, 1999 the Office terminated appellant's benefits on the grounds that she had no

residuals of the accepted employment injury. This decision was affirmed by an Office hearing representative on April 20, 2000. By decision dated November 27, 2001, it denied appellant's request for reconsideration of the hearing representative's decision. The Office also requested an assessment of permanent impairment from treating physician Dr. Daniel Trahan, a Board-certified neurologist, who responded on February 18, 2002 that he was unable to provide an impairment assessment.

On July 30, 2002 appellant filed a claim for a schedule award. In a July 25, 2002 report, Dr. Sofjan Lamid, a Board-certified physiatrist, stated that the accepted dog bite injury caused right peroneal neuropathy and a tear in the meniscus of her right knee. He did not specify how the bite caused these diagnosed conditions. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) (A.M.A., *Guides*) he estimated a whole person impairment of 24 percent. This rating was based on losses of 8 percent each for right knee flexion (80 percent), right knee varus (5 percent) and right knee valgus (10 percent). He also found a 2 percent whole person loss from right peroneal neuropathy and diasthesia.

By decision dated November 7, 2002, the Office denied appellant's claim for a schedule award. The Office found that the medical opinions of Dr. Gordon Nutik, Board-certified orthopedist and second opinion physician, and Dr. Daniel Seltzer, Board-certified orthopedic surgeon and impartial medical specialist, established that there were no residuals from the accepted dog bite injury. The Office further found that Dr. Lamid's opinion was insufficient, as he did not provide rationale for his stated impairment estimate.

By letter dated November 21, 2002, appellant requested an oral hearing before an Office hearing representative to review the Office's denial. An oral hearing was held on August 26, 2003 and medical opinion evidence from Drs. Trehant, Lamid and Douglas Swift, who is Board-certified in occupational medicine, were introduced. In an October 21, 2003 decision, the hearing representative affirmed the Office's schedule award denial. He found that the opinion of Dr. Seltzer carried the weight of the medical evidence because of the thoroughness of his report and his status as an impartial medical specialist.

On November 5, 2003 appellant requested reconsideration of the Office hearing representative's decision. She attached several exhibits relating to the treatment and diagnosis of conditions allegedly caused by the accepted injury of dog bite.¹

By decision dated January 15, 2004, the Office denied modification of the October 21, 2003 decision.

On January 13, 2005 appellant submitted a request for reconsideration of the Office's January 15, 2004 decision. She requested that the arthritis and meniscus tear of her right knee be accepted as injuries related to the accepted employment incident of being bitten by a dog. Appellant did not submit additional medical information. She contended that the Office had deliberately disregarded the reports of physicians who had found residuals of her employment

¹ The Board also notes that on November 11, 2005 appellant submitted a letter complaining about the handling of her case by the Office along with several administrative documents.

injury, withheld medical evidence from second opinion physician Dr. Nutik, and given improper weight to the opinion of Dr. Seltzer.

By decision dated February 2, 2005, the Office denied reconsideration of its January 15, 2004 decision on the grounds that no new and pertinent evidence or legal arguments had been submitted.

On May 2, 2005 appellant filed an appeal with the Board.² By order dated November 1, 2005, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record, to be followed by the issuance of an appropriate decision preserving appellant's right of appeal.

By decision dated June 9, 2006, the Office denied further merit review of its January 15, 2004 decision. The Office found that the issue to be resolved was a medical one, but that no new medical evidence had been submitted. It also found that appellant's reconsideration request had raised no new legal arguments and no evidence that it had erroneously applied or interpreted the law.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.³ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (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.⁴ 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.⁵

ANALYSIS

The Board finds that appellant has not established a basis for a review of the merits of the Office's January 15, 2004 decision. Her January 13, 2005 request for reconsideration stated several points of disagreement with the merit decision. However, she did not raise new arguments or present evidence that the Office erroneously applied or interpreted a specific point of law. Appellant also did not advance any relevant legal arguments not previously considered by the Office. She is thus not entitled to further review on the merits of her case under the first

² Docket No. 05-1190 (issued November 1, 2005).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

two criteria of section 10.606(b)(2).⁶ Additionally, appellant did not submit any factual or medical evidence with her January 13, 2005 request. As there was no relevant and pertinent new evidence for the Office to consider, appellant was not entitled to review under the third criteria of section 10.606(b)(2).⁷

Appellant did not meet any of the regulatory requirements for a review of the merits of her claim. The Office properly denied her January 13, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2006 is affirmed.

Issued: March 2, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁶ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

⁷ 20 C.F.R. § 10.606(b)(2)(iii).