

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

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**R.Y., Appellant**

**and**

**DEPARTMENT OF THE ARMY, PICATINNY  
ARSENAL, Arsenal, NJ, Employer**

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**Docket No. 08-777  
Issued: August 4, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 18, 2008 appellant filed a timely appeal of a nonmerit decision of the Office of Workers' Compensation Programs dated January 2, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to section 8128(a).

**FACTUAL HISTORY**

This case was previously on appeal before the Board. In a decision dated September 13, 2007, the Board found that appellant did not meet his burden of proof to establish that he contracted Lyme disease in the performance of duty.<sup>1</sup> The Board found that appellant had not submitted reasoned medical evidence explaining how his employment duties caused or

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<sup>1</sup> Docket No. 07-1032 (issued September 13, 2007).

aggravated his Lyme disease. The facts of the case, as set forth in the prior decision, are incorporated by reference.

On September 21, 2007 the Office received an e-mail correspondence from appellant. Appellant included a detailed trip report for travel to the Yuma Proving Ground in Yuma, Arizona, in April 2002. He also enclosed a statement from Carolyn Singleton, an individual from the employing establishment. Ms. Singleton indicated that the tick removed from appellant was a deer tick. She also noted that appellant worked at various locations outdoors.

The Office also received copies of previously received notes summarizing appellant's exposure to ticks and the removal of a second deer tick on April 16, 2002 and his subsequent treatment in 2006.

Additionally, the Office received a copy of treatment notes dated August 6, 2002 from Dr. James F. Biello, a Board-certified surgeon, whose treatment notes indicated that appellant had a tick bite. Dr. Biello noted that the tick was not engaged, prescribed medication and advised checking the area for an increase in redness.

On October 9, 2007 the Office received appellant's request for reconsideration. Appellant enclosed a timeline of his exposure to the deer tick and his subsequent diagnosis of Lyme disease. He also provided a November 14, 2006 report from Dr. Edward J. McManus, Board-certified in internal medicine. Dr. McManus noted that appellant was seen for evaluation of Lyme disease and indicated that appellant "had a long history of tick bites dating back at least four years." He advised that appellant's symptoms were notable for a "10-pound weight loss over the past month. He has some sleep disturbance and anxiousness. [Appellant] has had some left leg pain and left leg weakness. His review of symptoms is otherwise, negative." Dr. McManus also indicated that he was concerned about appellant's left leg weakness and decreased deep tendon reflexes and recommended follow up with a neurosurgeon.

By decision dated January 2, 2008, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that: (i) shows that [the Office] erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal

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<sup>2</sup> 5 U.S.C. § 8128(a).

argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the [the Office].<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

Appellant disagreed with the denial of his claim for an injury in the performance of duty. The underlying issue on reconsideration was whether he had met his burden of proof in establishing that he contracted Lyme disease in the performance of duty. However, appellant did not provide any relevant or pertinent new medical evidence to the issue of whether his Lyme disease was caused or aggravated to his employment-related exposure to ticks.

In his October 9, 2007 request for reconsideration, appellant enclosed a time line of his exposure to deer ticks at work and his subsequent diagnosis of Lyme disease. He also provided correspondence related to his travel to Yuma, Arizona and a statement from Ms. Singleton who confirmed that a deer tick was removed from him and that he worked outdoors. Additionally, appellant provided notes summarizing his exposure to and removal of a second deer tick in April 2002 and the beginning of his treatment in 2006. The Board notes that this would not be relevant and pertinent new evidence as the Office accepted that appellant was bitten by ticks while in the performance of duty. Instead, the underlying issue is medical in nature; whether the medical evidence establishes that tick exposure at work caused his claimed Lyme disease.

Appellant also submitted a copy of treatment notes from Dr. Biello dated August 6, 2002. These notes were previously of record. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>5</sup>

Appellant submitted a new report from Dr. McManus, who advised that appellant had a long history of tick bites and was treated for Lyme disease. While this report was a new report, Dr. McManus did not specifically address causal relationship between appellant's Lyme disease and any employment-related tick bites. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

Appellant did not provide any relevant and pertinent new medical evidence supporting his Lyme disease was causally related to an alleged employment-related exposure to deer ticks.

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<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

<sup>6</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 2, 2008 is affirmed.

Issued: August 4, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board