

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

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**M.D., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
Honolulu, HI, Employer**

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**Docket No. 10-1661  
Issued: February 15, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 22, 2010 appellant filed a timely appeal of a January 21, 2010 decision of the Office of Workers' Compensation Programs, denying her application for reconsideration without merit review of the claim. Since more than 180 days has elapsed between the last merit decision on September 25, 2009 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly denied appellant's application for reconsideration without further merit review under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On March 13, 2009 appellant, then a 40-year-old teller, filed an occupational disease or illness claim (Form CA-2) alleging that she sustained injuries on March 10, 2009. She described the injuries as head and lumbar contusions and left leg weakness. In a memorandum of

telephone call (Form CA-110) dated March 30, 2009, appellant reported that on March 10, 2009 she was arguing with her supervisor on the telephone about the “credit machine” and her request to go home was denied by the supervisor. She stated that she felt “stressed out,” had chest and head pain with dizziness, and she lost consciousness and woke on the floor. A hospital discharge summary dated March 12, 2009 from Dr. Evan Brown, an osteopath, noted that appellant had a prior myocardial infarction in April 2008 and had one prior episode two years ago that was suspected to be syncopal, but she denied loss of consciousness. With respect to the March 10, 2009 incident, Dr. Brown stated that appellant’s history was consistent with a neurocardiogenic syncope occurring at a time of stress.

By decision dated May 8, 2009, the Office denied the claim for compensation. It found that appellant had sustained an idiopathic fall, resulting from a personal, nonoccupational pathology with no contribution by any hazard or special condition of employment.<sup>1</sup> The Office noted that a witness statement indicated that appellant hit the floor without striking any obstruction.

Appellant requested a review of the written record by an Office hearing representative. In a May 20, 2009 letter, she stated that she did not have a heart problem, as her April 2008 cardiac incident was due to mistakenly receiving epinephrine intravenously. Appellant also argued that she may have hit her head on the chair when she fell. By decision dated September 25, 2009, the hearing representative affirmed the May 8, 2009 Office decision.

In a letter dated October 20, 2009, appellant requested reconsideration of her claim. She stated that she did not have a heart problem, as her heart attack in April 2008 was due to receiving epinephrine intravenously. Appellant stated that she had been suffering from back pain, noting back surgeries in 2005 and 2008. She stated that she did not know how the head contusion occurred, but a witness verbally told her that she slid in the chair backwards and her body hit the floor, but her head was under the chair. Appellant stated, “There are no witnesses in the accident but obviously I heat my head either on the end of the table or the foot bar legs on the office chair or the floor.” According to her, the witness that the Office identified was behind a desk divider and therefore was not sure if appellant hit her head on a hard surface. Appellant stated that she did not have a heart problem, but did have hypertension.

By decision dated January 21, 2010, the Office determined that the application for reconsideration was insufficient to warrant merit review of the claim.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,<sup>2</sup> its regulations provide that a claimant may obtain

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<sup>1</sup> See *N.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1202, issued May 8, 2009) (an idiopathic fall is when a personal, nonoccupational pathology causes an employee to collapse and strike the immediate supporting surface, without intervention or contribution from a hazard or special condition of employment).

<sup>2</sup> 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: “(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 evidence not previously considered by [the Office].”<sup>3</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

### **ANALYSIS**

Appellant submitted an October 20, 2009 application for reconsideration, without submitting any accompanying evidence. She stated that she disagreed with the Office in denying her claim, but did not show that the Office erroneously applied or interpreted a specific point of law. The Office found that appellant had sustained an idiopathic fall, and appellant did not show error by the Office with respect to a specific point of law.

The second basis for reopening a claim for merit review is to advance a new and relevant legal argument. Appellant did not advance a new and relevant legal argument with respect to the issues in this case. Her argument appeared to be that she disagreed with the Office’s factual findings. Appellant stated, for example, that her April 2008 heart attack was the result of epinephrine and she did not have a heart problem. This is not a new argument, as she provided a similar statement in a May 20, 2009 letter that was before the hearing representative. The Board notes that the prior medical evidence, such as a March 10, 2009 report from Dr. Donna Cheng, an internist, had noted the cause of the April 2008 incident.

Appellant also discussed the issue of whether she hit her head on the floor or on some intervening surface. She had previously argued in her May 20, 2009 statement that she may have hit her head on the chair as she fell and her application for reconsideration reiterates her prior statement. As noted above, appellant may obtain a merit review if she submits new and relevant evidence. She did not submit any new and relevant evidence with respect to her fall on March 10, 2009. Appellant did not submit any additional witness statements or other new and relevant evidence on the issue presented.

The Board finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 evidence not previously considered. Accordingly, the Office properly denied the application for reconsideration without merit review of the claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant’s application for reconsideration without merit review of the claim.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 21, 2010 is affirmed.

Issued: February 15, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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