

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

M.R., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Chamblee, GA, Employer**

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**Docket No. 07-1750
Issued: December 21, 2007**

Appearances:
L. Prentice Eager, III, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated May 9, 2007 which denied her request for reconsideration. Because more than one year has elapsed from the last merit decision dated April 21, 2006 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without conducting a merit review.

FACTUAL HISTORY

On November 20, 2005 appellant, then a 44-year-old customer service representative, filed a traumatic injury claim alleging that she experienced a brain aneurysm, a burst blood vessel and increased blood pressure at work that caused a psychiatric condition and organic brain

damage while in the performance of duty on June 13, 2003.¹ Her supervisor stated that appellant was found unconscious on the restroom floor. Appellant stopped work on June 13, 2003 and did not return. The employing establishment controverted her claim.

Appellant provided a July 3, 2004 computerized tomography (CT) scan report from Dr. Carolyn Dudley, a Board-certified radiologist, finding gaseous distension of the colon. She also submitted an unsigned July 1, 2004 abdominal ultrasound report finding echogenic focus in the neck of the gallbladder, likely stone, as well as sludge within the gallbladder. In a June 30, 2004 head CT scan report, Dr. Jamlik Johnson, a radiologist, noted that appellant presented with a history of headache and seizure. He noted an impression of a low attenuating lesion in the left frontal lobe that might represent an old infarct or postsurgical encephalomalacia and an overlying craniotomy defect. In a November 22, 2004 report, Dr. Laroy Penix, a neurologist, detailed hospital discharge instructions after appellant's treatment for serial seizures. Appellant also provided an unsigned "history and physical" report from Northside Hospital, noting that she underwent an emergency craniotomy for evaluation of hematoma and subsequent clipping of an intracranial aneurysm on June 14, 2003. The report noted that appellant had a craniotomy defect. In June 24, 2003 CT scan report of her head, Dr. Michael S. Pont, a Board-certified radiologist, reported stable postoperative changes following appellant's treatment for a subarachnoid hemorrhage. Appellant also provided an unsigned attending physician's report that did not detail physical findings or provide a diagnosis. She also submitted numerous statements from employing establishment personnel describing the events of June 13, 2003.

On March 20, 2006 the Office requested additional information concerning appellant's claim. She did not respond.

By decision dated April 21, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between her diagnosed conditions and her employment.

On April 13, 2007 appellant requested reconsideration. Her attorney indicated that he would provide an affidavit signed by appellant, but no such document appears in the record.

By decision dated May 9, 2007, the Office denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in

¹ The record also indicates that on December 11, 2005 appellant filed an occupational disease claim alleging that she developed an ear infection from loud telephone noise in the performance of duty. She indicated that she first realized her condition on March 30, 2003. The Office has not developed this claim.

using this discretion.² The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(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].”³

Section 10.608(b) provides that when an application for review of the merits of a claim 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.⁴ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁵

ANALYSIS

The Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review as she failed to meet any of the above-listed three criteria.

With her request for reconsideration, appellant submitted an appeal request form and a notice from her attorney requesting reconsideration. Appellant's reconsideration request did not state the grounds upon which she sought reconsideration, nor did it assert that the Office erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument. Rather, she requested reconsideration and counsel indicated that he would provide a signed affidavit from her. However, no such evidence appears within the record. The record does not reflect that appellant submitted any additional factual or medical evidence in support of her reconsideration request. Consequently, the Board finds that she did not submit relevant and pertinent new evidence not previously considered by the Office.

Because appellant did not assert that the Office erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument or constitute new and relevant evidence in support of her reconsideration request, the Board finds that the Office properly denied the request without conducting a merit review.

² 20 C.F.R. § 10.606(b)(2) (1999).

³ *Id.*

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ *Annette Louise*, 54 ECAB 783 (2003).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration of its April 21, 2006 decision without conducting a merit review.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2007
Washington, DC

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

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

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