

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA M. TRENT and DEPARTMENT OF THE AIR FORCE,
RANDOLPH AIR FORCE BASE, TX

*Docket No. 02-383; Submitted on the Record;
Issued June 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On July 10, 1998 appellant, then a 43-year-old retired program manager, filed an occupational disease claim alleging that her common variable immune deficiency was caused or aggravated in 1983 through 1988 due to work stress. She retired from her job on June 14, 1988. Appellant indicated that her immediate superior at the time of her injury was Larry Edge.

The Board finds that the Office properly denied appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.²

By decision dated December 9, 1998, the Office denied appellant's claim on the grounds that it was not timely filed within 3 years of the 1988 date of injury and her immediate superior did not have actual knowledge of the injury within 30 days of the injury date.

By decision dated May 22, 2000, the Office affirmed its December 9, 1998 decision but modified it to reflect that the applicable three-year time limitation for filing began on December 31, 1988.

¹ 20 C.F.R. § 10.606(b)(2).

² 20 C.F.R. § 10.608(b).

By letter dated May 14, 2001, appellant requested reconsideration.

By decision dated August 22, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was found to be cumulative, repetitious, irrelevant or immaterial and therefore was not sufficient to warrant further merit review.

In support of her May 14, 2001 request for reconsideration, appellant submitted an August 2, 1988 letter from Dr. Bradley E. Personius, the employing establishment's Chief of Physical Examinations and Standards, regarding her application for disability retirement, who stated his medical opinion that appellant would not be able to perform her duties due to her immunoglobulin deficiencies. However, this letter does not address the issue of whether appellant's immediate superior had actual knowledge of her injury at that time. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

In letters dated May 11, 1988, Mr. Edge, appellant's supervisor, advised appellant that she had used an inordinate amount of leave which had affected her job performance and he had scheduled an appointment for her with a counselor to determine whether she had a personal problem contributing to her leave usage and declining level of efficiency. However, this letter does not address the issue of whether Mr. Edge had actual knowledge of appellant's claimed medical condition. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant submitted a duty travel form dated October 9, 1987, documents relating to a training course scheduled for May 29, 1986 through September 30, 1987, and a summary of leave usage at the time of her disability retirement. These documents do not address the issue of appellant's untimely claim. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant submitted her handwritten notes dated May 4 and 16, 1988 in which she alleged that in 1988 she told Mr. Edge about her medical condition on numerous occasions. However, her unsupported statement is not sufficient to establish that Mr. Edge had actual knowledge of her condition and therefore this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted copies of medical records dated October 1986 to August 1988. These medical reports do not address the critical issue in this case, whether appellant's claim was timely filed. Therefore this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also argued that her referral to a counselor by Mr. Edge was sufficient to establish that he had actual knowledge of her injury and she cited *Eli Haggins*³ in support of her position. However, that case involved a claim for a hearing loss by an employee who was exposed to hazardous noise in his job. The Board held that annual audiograms made at the

³ 36 ECAB 245 (1984).

employing establishment's dispensary served as actual knowledge to the employing establishment of a loss of hearing possibly related to the employment. The Board noted that, if an agency, in connection with a recognized environmental hazard, had an employee testing program and a test revealed the employee to have a defect, this would be accepted as constituting actual knowledge. Appellant's case does not involve testing by the employing establishment for a recognized environmental hazard. Her referral by her supervisor was for counseling for personal problems, not for any diagnostic purpose for a recognized environmental hazard at the employing establishment. Therefore, appellant's argument does not constitute a relevant legal argument not previously considered by the Office.

As 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 by the Office, the Office properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated August 22, 2001 is affirmed.

Dated, Washington, DC
June 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member