

FACTUAL HISTORY

The case is on appeal to the Board for the second time.² On September 19, 2001 appellant, then a 34-year-old clerk, filed a claim for a traumatic injury, alleging that on September 15, 2001 she was in a motor vehicle accident and sustained injury which caused head, back, neck and shoulder injuries as well as complications with her pregnancy. Appellant stopped working on September 17, 2001 and has not returned to work. On the first appeal, the Board affirmed the Office's January 17, 2003 decision which found that the medical evidence was not sufficient to establish that appellant's physical condition was caused by the September 15, 2001 motor vehicle accident.

In a letter dated December 17, 2003, appellant requested reconsideration. Appellant submitted a medical report dated June 11, 2003 from Dr. Denee R. Choice, a Board-certified psychiatrist, and a nerve conduction study dated March 20, 2003. In the June 11, 2003 report, Dr. Choice considered appellant's history of injury, performed a physical examination and noted that the results of magnetic resonance imaging scans were normal and electrodiagnostic studies were limited by appellant's refusal to do the needle portion. She noted that appellant had evidence of mild bilateral carpal tunnel syndrome and abnormalities in the left peroneal motor response. Dr. Choice diagnosed chronic pain syndrome with deconditioning, lumbosacral strain status post motor vehicle accident, and chronic pain-related anxiety and depression. She prescribed physical therapy, medication and heat and ice treatment. Dr. Choice stated that the March 20, 2003 nerve conduction study showed electrodiagnostic abnormalities limited to the left peroneal motor nerve and small response with a prolonged distal latency. She stated that the findings would be consistent with an old L5 radiculopathy.

In a nonmerit decision dated January 12, 2004, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that, the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁴

² Docket No. 03-789 (issued July 24, 2003). The facts and history surrounding the prior appeal are set forth in the initial decisions and are hereby incorporated by reference.

³ Section 10.606(b)(2)(i-iii).

⁴ Section 10.608(a).

ANALYSIS

Appellant's claim was denied by the Office because appellant did not submit rationalized medical evidence to establish that her alleged head, back, neck and shoulder injuries, or her difficult pregnancy were causally related to the automobile collision of September 15, 2001. Thereafter, the evidence appellant submitted in support of her request for reconsideration consisted of Dr. Choice's June 11, 2003 report and the March 20, 2003 nerve conduction study. In the June 11, 2003 report, Dr. Choice performed a physical examination and provided diagnoses which included chronic pain syndrome with deconditioning and lumbosacral strain status post motor vehicle accident. Her interpretation of the March 20, 2003 nerve conduction study was that there were electrodiagnostic abnormalities limited to the left peroneal motor nerve and the response was small with a prolonged distal latency. Dr. Choice did not offer any explanation of medical causation in either report. As the issue in the case is causal relationship, the additional medical evidence is not new and relevant because it did not address how appellant's traumatic injury would have caused the diagnosed conditions.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) on the grounds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument or present relevant and pertinent new evidence not previously considered by the Office.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member