

FACTUAL HISTORY

The case was before the Board on a prior appeal. On October 9, 2002 the Office hearing representative affirmed the denial of appellant's claim that her high blood pressure was aggravated by factors of her federal employment. In a decision dated December 24, 2002, the Office denied appellant's request for reconsideration on the grounds that she failed to submit any new evidence or raise any new legal arguments. The Board reviewed the evidence and, by decision dated May 13, 2003, affirmed the Office decisions dated October 9 and December 24, 2002.² On August 20, 2003 the Board denied appellant's petition for reconsideration.³

In an undated letter, which was received by the Office on October 1, 2003, appellant requested reconsideration of a decision dated August 20, 2003. She requested her case be re-evaluated and contended that her injury occurred on the job and her physician "basically stated that the injury was sustained during the performance of duty."

In a decision dated November 13, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her 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

Section 8128(a) of the Federal Employees' Compensation Act⁴ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵ Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.⁶

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁷ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously

² Docket No. 00-382 (issued May 13, 2003).

³ Docket No. 00-382 (issued August 30, 2003).

⁴ 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁵ *Raj B. Thackurdeen*, 54 ECAB ____ (Docket No. 02-2392, issued February 13, 2003); *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

⁶ 20 C.F.R. § 10.608(a).

⁷ 20 C.F.R. § 10.606(b)(1)-(2); see *Sharyn D. Bannick*, 54 ECAB ____ (Docket No. 03-567, issued April 18, 2003).

considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁸

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁹

ANALYSIS

Appellant's undated request for reconsideration, which the Office received on October 1, 2003, neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant also did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). In addition, appellant did not submit any medical or factual evidence with her reconsideration request. Consequently, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

⁸ 20 C.F.R. § 10.608(b).

⁹ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2003 is affirmed.

Issued: June 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member