

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

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**CHERYL L. ZAINFELD, Appellant**

**and**

**PEACE CORPS, Morocco, Employer**

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**Docket No. 04-438  
Issued: March 26, 2004**

*Appearances:*  
*Cheryl L. Zainfeld, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On December 9, 2003 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated October 23, 2003, which denied her request for reconsideration of her claim under 5 U.S.C. § 8128. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board's jurisdiction is limited to the nonmerit decision.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

On August 1, 2000 appellant, then a 55-year-old Peace Corps volunteer, filed an occupational disease claim for colitis. She alleged that she was regularly exposed to

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<sup>1</sup> The Board's jurisdiction is limited to those decisions issued by the Office within one year of the date that the appeal was filed on December 9, 2003. Accordingly, the Board does not have jurisdiction to review the Office's October 28, 2002 decision terminating appellant's compensation. See 20 C.F.R. §§ 501.2(c) and 501.3.

contaminated water at her post and experienced high fevers and diarrhea several times during the first year of her employment. The Office accepted the claim for chronic colitis. The record indicates that, from November 1999 to January 2000, appellant was off work and in the United States seeking medical treatment for her work-related intestinal condition. Appellant was later discharged from duty by the employing establishment and she has been on the periodic rolls for disability compensation since July 19, 2000.

Appellant was under the care of Dr. Eva Aagard, a Board-certified internist, and Drs. G.C. Gutteroff and James H. Lewis, Board-certified gastroenterologists, for treatment of her accepted condition. Dr. Aagard completed a Form CA-20, an attending physician's report dated January 26, 2001, indicating that appellant was disabled for work. On April 14, 2002 the Office referred appellant for a second opinion medical evaluation to Dr. John Sooneland, a Board-certified gastroenterologist, who found no evidence of colitis based on a June 17, 2002 colonoscopy. He opined that appellant's colitis had resolved and that she was no longer disabled for work. On September 17, 2002 the Office issued a notice of proposed termination of compensation, finding that the weight of the medical evidence established that appellant was no longer disabled and that she had no residuals due to her work-related condition. Appellant was given 30 days to provide additional evidence or argument if she disagreed with the proposed action.

In a decision dated October 28, 2002, the Office terminated appellant's compensation and medical benefits.

In an October 9, 2003 letter, appellant requested reconsideration and submitted a personal statement explaining why she disagreed with the Office's termination decision.<sup>2</sup>

In a decision dated October 23, 2003, the Office denied appellant's request for reconsideration.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

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<sup>2</sup> Appellant argued that chronic colitis was incurable as defined by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. She alleged that she was ineligible for private insurance for chronic colitis since it was considered by most insurers to be a preexisting condition.

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

Appellant's October 9, 2003 request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Accordingly, appellant failed to meet the requirements of sections 10.606(b)(2)(i) and (b)(2)(ii).

Appellant also failed to submit any relevant and pertinent new evidence on reconsideration to support her claim for compensation under section 10.606(b)(2)(iii). Appellant argued that chronic colitis was incurable and therefore the Office erred in terminating her compensation and medical benefits. The Board notes, however, that appellant is not a medical expert and her statements are not probative on the medical issues of the claim relevant to termination. Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> Consequently, because appellant failed to satisfy the requirements of section 10.606(b)(2), the Board finds that the Office properly refused to reopen her claim for a merit review.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128.

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<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>6</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 23, 2003 is affirmed.

Issued: March 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member