

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

HUGH E. WOOD, Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Emmitsburg, MD, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1336
Issued: September 29, 2004**

Appearances:
Hugh E. Wood, 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 April 21, 2004 appellant timely filed an appeal of the Office of Workers' Compensation Programs' nonmerit decision dated September 25, 2003 which denied his request for reconsideration. Because more than one year has elapsed from the last merit decision dated October 29, 2002, 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 of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 4, 2002 appellant, then a 53-year-old supervisory training specialist, filed a traumatic injury claim alleging that he experienced respiratory distress caused by the conditions in which he worked at Ground Zero at the site of the World Trade Center during

September 2001. Appellant's supervisor indicated that this claim was an occupational disease claim rather than one for traumatic injury.

By letter dated April 10, 2002, the Office advised appellant to submit a detailed description of his injury and to provide medical evidence in support of his claim. In response, appellant advised that he was exposed to a variety of contaminants following the collapse of the World Trade Center Towers and provided a description of his symptoms. He stated that Dr. Leo Kratz, an attending family practitioner, had scheduled a pulmonary function test for April 25, 2002. No other evidence was provided.

By decision dated May 10, 2002, the Office found that the evidence was insufficient to establish fact of injury. The Office noted that appellant had advised that he was exposed to a variety of contaminants at the World Trade Center. However, appellant did not submit any evidence to support exposure to such contaminants or submit medical evidence to support that a condition was caused by the alleged exposure.

In a June 3, 2002 Form CA-20 attending physician's report, Dr. Kratz advised that he first examined appellant on April 19, 2002 who reported a history of exposure to respiratory irritants with an occasional cough. Pulmonary function tests were normal and findings, which were illegible, were reported on chest x-rays. Dr. Kratz advised that appellant had respiratory irritant exposure and opined, with a checkmark, that he did not believe the condition was caused or aggravated by any employment activity.

In a June 7, 2002 letter, appellant requested a review of the written record. He submitted an unsigned statement from Jeff T. Dyer, Program Manager, EMS Health and Safety with the National Fire Academy. During his participation at the World Trade Center site from September 13 through September 26, 2001, Mr. Dyer witnessed appellant working at the World Trade Center site.¹ He stated that appellant exhibited signs and symptoms of red and irritated eyes, nasal discharge, dry cough with mental and physical fatigue. Mr. Dyer opined that the symptoms were the result of exposure to dust, smoke and other contaminants present at the recovery site.

By decision dated October 29, 2002, an Office hearing representative affirmed the May 10, 2002 decision. The hearing representative found that appellant did not submit sufficient medical opinion evidence to establish that a medical condition was diagnosed causally related to the accepted work exposure.

In a September 10, 2003 letter, appellant requested reconsideration of the Office's October 29, 2002 decision. Appellant advised that he was awaiting confirmation of his appointment for a comprehensive medical screening from the U.S. Department of Health and Human Services World Trade Center Responder Screening program. He stated that he experienced some of the medical conditions which were now being associated with exposure to the World Trade Center collapse. The reconsideration request was accompanied by a copy of a document from the Department of Health and Human Services internet web page. No additional medical evidence was submitted.

¹ Mr. Dyer's statement erroneously listed 2002 as the year of the Word Trade Center collapse.

By decision dated September 25, 2003, the Office denied appellant's request for reconsideration finding that he failed to submit new and relevant evidence or raise legal contentions not previously considered.²

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ 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.⁵ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the regulatory standards to the claimant's application for reconsideration and any evidence submitted in support thereof.⁶

ANALYSIS

The Office accepted that appellant was exposed to the World Trade Center disaster site in September 2001. The relevant issue is a medical question of whether a medical condition has been diagnosed causally related to such exposure. In support of his request for reconsideration, appellant advised that he was waiting for an appointment with the U.S. Department of Health and Human Services World Trade Center Responder Screening program staff and described some of the medical conditions he experienced which were being associated with the World Trade Center collapse. His lay statement, however, does not pertain to the relevant medical issue involved and does not constitute a basis for reopening the claim.⁷ As noted, appellant failed to submit any medical evidence with his request for reconsideration.

Appellant also submitted a copy of a document from the Department of Health and Human Services internet web page with his request for reconsideration. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal

² The record contains new evidence subsequent to the Office's September 25, 2003 decision. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ 20 C.F.R. § 10.608(b) (1999).

⁶ *Annette Louise*, 54 ECAB ___ (Docket No. 03-335, issued August 26, 2003).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.⁸ The material from the Department of Health and Human Services internet web page is not relevant to the underlying medical issue in the claim. Appellant has not submitted pertinent or relevant evidence not previously considered by the Office nor did his reconsideration request show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

Appellant is not entitled to a review of the merits of his claim under the three requirements at section 10.606(b)(2). The Board finds that the Office properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that the Office properly denied merit review of appellant's claim on September 25, 2003.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Dominic E. Coppo*, 44 ECAB 484 (1993).