

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

JAN BRADSHAW, Appellant

and

**DEPARTMENT OF DEFENSE, Indianapolis, IN
Employer**

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**Docket No. 04-1483
Issued: February 22, 2005**

Appearances:
Jan Bradshaw, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 17, 2004 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated March 11, 2004 denying her request for reconsideration. Pursuant to its regulations, the Board has jurisdiction over this nonmerit decision.¹ Because more than one year has elapsed between the last merit decision dated November 12, 2002 and the filing of this appeal on May 17, 2004, 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 refused to reopen appellant's claim for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

FACTUAL HISTORY

On August 31, 1989 appellant, then a 32-year-old supply technician, filed an occupational disease claim alleging that factors of her federal employment caused recurrent upper respiratory infections, recurrent headaches and upper respiratory tract symptoms compatible with allergies. Appellant alleged that she had sinusitis, which may be related to exposure to fuels from the gas station at the employing establishment. The Office accepted the claim for irritant recurrent induced bronchitis secondary to gas vapors and aggravation of nasal rhinitis. In a separate claim under file No. 10-405960, the Office accepted appellant's claim for perennial nasal allergy, bronchial asthma and extreme chemical sensitivity.

In a January 25, 2001 report, Dr. Morris noted appellant's history of injury and treatment, which included treating her since May 1990 for severe allergies. He opined that appellant had multiple chemical sensitivity, perennial nasal allergy and asthma. Dr. Morris also indicated that appellant was strongly sensitive to formaldehyde, phenol and ethanol (hydrocarbons) and advised that, it was difficult for appellant to avoid these at the occupation. He explained that appellant had a "toxicant induced loss of tolerance." Dr. Morris advised that appellant was unable to work on many occasions due to the development of sinus infections, secondary to allergies. He indicated that he last saw appellant on December 27, 2000 and at that time she was "aggravated with a sinusitis secondary to chemicals, dust and molds at work." Dr. Morris explained that appellant would never be able to tolerate enough exposure to continue working but advised that by avoiding contamination at work she would gradually improve. He indicated that appellant was disabled at the present time from all work and would never be able to work in a dusty, moldy or chemically contaminated environment.

On February 20, 2001 appellant filed a Form CA-2a notice of recurrence and listed the date she stopped work as January 29, 2001. Appellant stated that she has been exposed to dust, mold and chemicals on a continuous basis at work during the last four years. She also indicated that there were several construction projects over the last four years in buildings where she worked.

The Office referred appellant for a second opinion on April 11, 2001.

In a May 11, 2001 report, Dr. Shirley Conibear, Board-certified in occupational medicine and a second opinion physician, opined that appellant was not disabled and could return to work.

On June 14, 2001 the Office expanded appellant's claim to include permanent aggravation of asthma, allergies and vasomotor rhinitis.

By letter dated June 15, 2001, the Office requested clarification from the second opinion physician with respect to whether appellant's disability was due to the work-related condition.

In his report of June 21, 2001, Dr. Morris stated that appellant was unable to work from January 29 to June 1, 2001, as she was unable to tolerate the work environment and advised that she left because she could not tolerate the conditions at work.

In a July 2, 2001 addendum, Dr. Conibear opined that appellant did not experience a substantial, temporary or permanent worsening of her condition in January 2001 and advised that appellant was not totally disabled on January 29, 2001 and was not now totally disabled.

By decision date July 23, 2001, the Office denied the recurrence claim commencing January 25, 2001, to the present finding the evidence insufficient to establish that appellant's disability was causally related to the accepted work condition.

In an August 6, 2001 report, Dr. Morris advised that he saw appellant on August 1, 2001 and indicated that she continued to be reactive to inhaled molds and continued to try to avoid inhalants and chemicals and was unable to work since January 29, 2001. He indicated that since being off work appellant was somewhat better although her most difficult allergy problems were those of multiple chemical sensitivity, which affected the central nervous system with confusion, headache and other symptoms such as chronic fatigue. Dr. Morris advised that asthma was not the main concern in appellant's disability and that he was not recommending that appellant return to work, although he understood that appellant must return to satisfy her job requirements.

By letter dated August 18, 2001, appellant requested a hearing, which was held on July 24, 2002. During the hearing, regarding the January 25, 2001 period, she testified that on January 8, 2001 her office filled up with a chemical and smoke odor. Appellant alleged that she saw Dr. Morris on January 25, 2001 but he did not perform any medical testing. Appellant stated that she became totally disabled January 29, 2001, returned on August 13, 2001 and began losing time again on August 20, 2001.

Dr. Morris continued to submit reports dated August 17 and 28, November 8 and September 11, 2001 in which he essentially repeated previous findings.

By decision dated November 12, 2002, the Office hearing representative affirmed the July 23, 2001 decision.

By letter dated November 8, 2003, appellant requested reconsideration. In support of her claim she submitted approximately 52 pages of evidence. The additional evidence was comprised of copies of previous reports and an October 20, 2003 affidavit from Dr. Morris. In his affidavit, Dr. Morris outlined appellant's history of injury and treatment and essentially repeated his previous statements and conclusions regarding appellant's condition. Regarding the time frame from March 3, 1997 to January 25, 2001, he opined that appellant's condition deteriorated due to repeated and prolonged exposure to dust, mold and chemicals from construction and maintenance projects that took place where appellant worked. He advised that appellant was completely disabled from January 25 to August 13, 2001, until appellant was required to return to work.

By decision dated March 11, 2004, the Office denied appellant's request for reconsideration finding that she failed to submit either new and relevant evidence or legal contentions not previously considered.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

(ii) Advances a relevant legal argument not previously considered by [the Office]; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”³

Section 10.608(b) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.

ANALYSIS

The relevant underlying issue in this case is a medical one, whether appellant sustained a recurrence of disability on January 29, 2001 that was causally related to her accepted employment injuries. In support of her request for reconsideration, appellant submitted Dr. Morris' affidavit and medical report. This report, however, contains similar information regarding the description of appellant's employment injury and medical treatment, diagnosis and opinion regarding the causal relationship between appellant's current immunological conditions and her accepted employment injury as contained in Dr. Morris' previous reports including his December 20, 2000 and January 25 and June 21, 2001 reports, which were previously reviewed by the Office in its November 12, 2002 decision. Inasmuch as Dr. Morris' October 20, 2003 report is repetitious of his earlier reports; it is insufficient to require a reopening of the case for a merit review. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴ The additional evidence submitted by appellant was duplicative of reports previously submitted. Appellant has not otherwise shown that the Office erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by the Office.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Edward W. Malaniak*, 51 ECAB 279 (2000).

For the foregoing reasons, 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 any relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member