United States Department of Labor
Employees' Compensation Appeals Board

LILLIE M. WESLEY, Appellant, claiming as widow of BLAKE WESLEY	)	
and	)	**Docket No. 05-1313**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	**Issued: October 24, 2005**

Appearances:
Lillie M. Wesley, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 25, 2005 appellant filed a timely appeal from a February 25, 2005 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated February 25, 2003 and the filing of this appeal on May 25, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

This is the second appeal before the Board. On July 1, 1999 the employee, a 50-year-old welder, filed a Form CA-2 claim for benefits, alleging that he developed a myelodysplastic syndrome condition, which was diagnosed in April 1997. The employee worked at the

employing establishment from 1962 until his retirement in 1982. An April 3, 1997 bone marrow aspiration showed "dysplastic and megaloblastoid feature" demonstrative of meylodysplastic syndrome. In reports dated November 9, 1999, Dr. James E. Cantrell, a Board-certified hematologist and attending physician, diagnosed meyolodysplastic syndrome.

The employee passed away on February 19, 2000. The death certificate indicated that the cause of death was myelodysplasia. On April 10, 2000 appellant filed a Form CA-5 claim for death benefits.

In a report dated November 28, 2000, Dr. Cantrell advised that the employee died on February 19, 2000 from myelodysplasia. He stated:

> "[The employee's] family has informed me that he worked at [the employing establishment] and may have been exposed to some agents that could have damaged his marrow and possibly even caused myelodysplasia. I am unable to make that determination, but I am writing to inform you that he did have this diagnosis and as you may know, this disease can be caused by chemicals and radiation."

By decision dated January 16, 2001, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found that appellant submitted insufficient medical evidence to establish that the employee's myelodysplastic syndrome was causally related to any factor of his federal employment. The Office further found that appellant submitted insufficient evidence to substantiate the employee's occupational exposure to any radiation or chemical agents.

By letter dated February 7, 2001, appellant requested an oral hearing, which was held on September 6, 2001.

By decision dated February 11, 2002, an Office hearing representative affirmed, as modified, the January 16, 2001 Office decision. The hearing representative found that appellant had established the employee was exposed to chemicals, including benzene. The hearing representative found that the evidence was sufficient to establish that the employee was exposed to toxic elements during the course of his federal employment. The hearing representative further found, however, that appellant had not submitted sufficient medical evidence to establish a causal relationship between the employee's accepted exposures and his myelodysplasia condition.

In a February 20, 2003 decision,[1] the Board affirmed the Office's denial of the claim. The Board found that appellant submitted sufficient evidence to establish that the employee was exposed to hazardous chemicals in the course of his 20 years of work as a machinist and foreman, including benzene. The Board found, however, that Dr. Cantrell's reports did not establish a causal relationship between the employee's occupational exposures to such toxic elements and his myelodysplastic syndrome. The Board noted that appellant did not submit sufficient evidence to substantiate that the employee was exposed to radiation in the course of his

[1] Docket No. 02-1358 (issued February 20, 2003).

federal employment. The complete facts of this case are set forth in the Board's February 20, 2003 decision and are herein incorporated by reference.

By letter dated January 19, 2004, appellant requested reconsideration. Appellant submitted a November 13, 2003 report from Dr. Clayton H. Davis, a Board-certified family practitioner, who treated appellant for myelodysplastic syndrome in 1999. He stated:

> "From all accounts, it appears that [the employee] definitely had myelodysplastic syndrome. And that he also worked for an extended period of time at [the employing establishment] in and around areas that put him at risk for exposure to multiple chemical agents. It appears to me that there is clear evidence of these first two questions and that apparently there was not clear evidence as to a cause of relationship between myelodysplastic syndrome and exposure to these multiple chemical agents.
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> "To establish that cause of relationship with 100 percent certainty would be every difficult. The medical literature is very clear that exposure to multiple chemical toxins, many of which [the employee] was exposed to are clearly linked to myelodysplastic syndrome. It is also clear that [the employee] was exposed to all of these chemicals for an extended period of time prior to his development of myelodysplastic syndrome.
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> "There also does not appear to be any other risk factors for development of myelodysplastic syndrome other than these chemical exposures. Therefore, it would be my opinion that the most likely cause of the development of myelodysplastic syndrome by [the employee] was due to chemical exposures during his time of employment at [the employing establishment]."

By decision dated February 19, 2004, the Office denied modification of its prior decisions.

In a letter received by the Office on February 15, 2005, appellant requested reconsideration. Appellant submitted: an undated report which documented exposure of employees at the employing establishment to welding fumes, chrome fumes, and cadmium fumes; an October 24, 2002 edition of a paper published by the employing establishment entitled, "We've come a long, long way" describing efforts at the employing establishment to improve safety, health and working conditions for its employees by attempting to reduce and prevent exposure to toxic elements; and a copy of Dr. Davis' November 13, 2003 report.

By decision dated February 25, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by

advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[2] 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.[3]

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The October 24, 2002 edition of a paper published by the employing establishment is not relevant because it does not constitute medical evidence pursuant to section 8101(2). The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[4] The undated report addressing the exposure of the employing establishment employees to welding, chrome and cadmium fumes is not relevant because the Office already accepted the fact that appellant was exposed to toxic elements while working for the employing establishment. Moreover, this report is not specifically addressed to appellant's exposures. This report did not present any additional evidence pertaining to the relevant issue of whether there was a causal relationship between the employee's occupational exposures to toxic elements and his myelodysplastic syndrome, which caused his death. The November 13, 2003 letter from Dr. Davis was previously considered by the Office in a previous decision and is therefore cumulative and repetitive. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing 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 reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[3] *Howard A. Williams*, 45 ECAB 853 (1994).

[4] *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 24, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board