

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOREN A. KREGG and DEPARTMENT OF THE AIR FORCE,  
EDWARDS AIR FORCE BASE, CA

*Docket No. 01-269; Submitted on the Record;  
Issued August 29, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 22, 2000 request for reconsideration.

In a decision dated June 23, 1999, the Office denied appellant's claim that he sustained a recurrence of disability on or about December 8, 1998 as a result of his December 19, 1997 employment injury, which was accepted for low back and cervical strain. Appellant explained that his pain worsened from not taking his medication at work. The medication made him sleepy, so he would wait until he got home to take it. The Office noted what evidence was required and denied appellant's claim on the grounds that the medical evidence failed to establish a recurrence of disability causally related to the accepted work injury.

On June 22, 2000 appellant filed a request for reconsideration and made the following arguments: (1) The period of claimed disability and wage loss resulted from specific new factors of employment (new injury), and as such is not properly adjudicated as a claim for recurrent injury; (2) That wages lost from January 27, 1999 to the present are the result of appellant's new injury; (3) That these new factors of employment caused a new period of disability as well as a permanent aggravation of his previous injury and underlying degenerative disease; (4) That he was returned to work that was not suitable and his known medical limitations were exceeded; and (5) That he was a viable candidate for vocational rehabilitation and was currently seeking that benefit.

In a decision dated August 10, 2000, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted in support of the request was immaterial and irrelevant and therefore insufficient to warrant review of the prior decision.

The Board finds that the Office acted within its discretion in denying appellant's June 22, 2000 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations<sup>1</sup> provides that an application for reconsideration, including all supporting documents, must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>2</sup>

The arguments presented in support of appellant's June 22, 2000 request for reconsideration meet none of the standards for obtaining a merit review of the case. The first three arguments, which assert that specific new factors of employment caused a new injury and a new period of disability, are irrelevant to the claim of recurrence appellant filed on February 9, 1999. Appellant claimed that his disability on or about December 8, 1998 was a result of his December 19, 1997 employment injury. Specifically, appellant related his disability to not being able to take the medication prescribed for his employment injury, thereby implicating a change in the nature and extent of his injury-related condition or at least a change in his injury-related symptomatology. The Office denied appellant's claim of recurrence for failure to submit the necessary medical evidence. Argument that appellant's disability is instead related to a new injury caused by specific new factors of employment has no bearing on the issue decided by the Office's August 10, 2000 decision denying the claim of recurrence.

Appellant also argues that he had returned to work that was not suitable and that his known medical limitations were exceeded. This is a medical argument that requires the support of medical evidence. Appellant submitted no such medical evidence with his request for reconsideration and made no reference to supporting medical evidence in the record. Although the reopening of a case for merit review may be predicated solely on a legal premise, such reopening is not required where the contention does not have a reasonable color of validity.<sup>3</sup> Without supporting medical evidence, appellant's suitability argument does not entitle him to a merit review of his claim.

Appellant's final argument, that he was seeking vocational rehabilitation, is irrelevant to the Office's August 10, 2000 decision.

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<sup>1</sup> 20 C.F.R. § 10.606(b).

<sup>2</sup> *Id.* at § 10.608.

<sup>3</sup> *Constance G. Mills*, 40 ECAB 317 (1988) (legal premise not previously considered must have reasonable color of validity). See generally *Daniel O'Toole*, 1 ECAB 107 (1948) (that which is offered as an application should contain at least the assertion of an adequate legal premise, or the proffer of proof, or the attachment of a report or other form of written evidence, material to the kind of decision which the applicant expects to receive as the result of his application; if the proposition advanced should be one of law, it should have some reasonable color of validity to establish an application as *prima facie* sufficient).

Because appellant's June 22, 2000 request for reconsideration failed to meet at least one of the standards for obtaining a merit review of his claim, the Office acted within its discretion in denying the request.

The August 10, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 29, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member