

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA M. STROUD and DEPARTMENT OF THE AIR FORCE,
WRIGHT PATTERSON AIR FORCE BASE, OH

*Docket No. 00-2277; Submitted on the Record;
Issued June 12, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review.

This case is before the Board for a second time. In *Anna M. Stroud*, the Board affirmed the Office's hearing representative's decision of July 22, 1998 which found that the medical evidence of record was insufficient to establish that appellant's claimed digestive condition was causally related to her federal employment duties.¹ By letter dated May 25, 2000, appellant's counsel requested reconsideration and submitted additional evidence. By decision dated May 31, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was of an immaterial nature and thus insufficient to warrant review of the prior decision.

The Board finds with respect to the Office's May 31, 2000 decision denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

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) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that, when an

¹ BRB No. 98-2606 (issued March 23, 2000).

² 20 C.F.R. § 10.606(b)(2) (1999).

application for reconsideration 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.³

Appellant's May 25, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration of the hearing representative's July 22, 1998 decision, appellant submitted copies of handwritten emergency record notes from St. Elizabeth Medical Center, Dayton, Ohio along with a copy of an electromyography tracing dated October 13, 1996. As this evidence does not address the relevant issue in this case, *i.e.*, whether appellant's claimed digestive condition is causally related to her employment, the Office properly found that the evidence was of an immaterial nature and insufficient to warrant a merit view of the prior decision.

The Board notes that subsequent to the hearing representative's July 22, 1998 decision, the Office received additional medical evidence on July 31, 1998, which should have been included in the Office's review of appellant's reconsideration request. This includes a March 28, 1998 upper gastrointestinal series test result diagnosing a possible mild gastritis; progress notes and a medical report dated May 15, 1998 from Dr. William C.M. Wilson, a Board-certified internist specializing in digestive diseases.

In this medical report, Dr. Wilson noted that he had been treating appellant since last October in regards to her abdominal pain, loose stools, weight loss, nausea and vomiting. He related that a March esophagogastroduodenoscopy was normal with a normal small bowel biopsy. A flexible sigmoidoscopy was also normal with normal biopsies. A small bowel follow through showed very rapid transit through the small bowel. Dr. Wilson stated that appellant's problem was one of a severe irritable bowel syndrome. He stated that appellant possibly could have originally had an infectious problem that she may have acquired in Turkey, as appellant claimed that her problems all began after her overseas trip to Turkey in October 1996. Dr. Wilson further stated that, unfortunately, no infectious agent has ever been detected on appellant, with the exception of a *Helicobacter pylori* infection of her stomach, which he opined most likely would not be contributing to her symptoms and really could have been acquired anywhere. Dr. Wilson's report offered an equivocal opinion on the causal relationship of appellant's stomach condition, which is insufficient to establish appellant's burden of proof.⁴ Further, Dr. Wilson's report is cumulative of the medical reports of record from Dr. J. DeWayne Tooson, an internist, and Dr. Kimberly Bethel-Murray, an internist, who also found that a specific pathogen for appellant's stomach condition had never been identified and failed to offer a rationalized medical opinion by citing particular employment factors as a cause or aggravating

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *Ern Reynolds*, 45 ECAB 690, 696 (1994).

factor or offer any explanation of how these factors might effect a preexisting condition. Consequently, Dr. Wilson's report is not sufficient to warrant reopening the record for merit review.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The May 31, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 12, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member