

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD L. MORGAN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Alexandria, LA

*Docket No. 01-611; Submitted on the Record;  
Issued September 18, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant is entitled to a schedule award for a permanent partial impairment to his liver; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's requests for reconsideration pursuant to 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the January 21, 2000 decision of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

By letters dated February 14, May 19 and June 22, 2000, appellant requested reconsideration of the Office's decision and submitted additional evidence. In each request, appellant contended that he was entitled to a schedule award for his hepatitis because his liver problem affected all the extremities of his body. Appellant did not submit any additional evidence with his February 14, 2000 reconsideration request.

By decision dated April 25, 2000, the Office denied appellant's request for reconsideration.

With his May 19, 2000 request for reconsideration, appellant submitted massage therapy notes dated May 19 to June 13, 2000 showing that his whole body has been massaged for his complaint of being "real achy." He also submitted a notice of a change of address.

By decision dated June 19, 2000, the Office denied appellant's reconsideration request.

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<sup>1</sup> The Board has held that the liver is not included in the schedule award provisions of the Federal Employees' Compensation Act and its regulations. *Thomas E. Stubbs*, 40 ECAB 647 (1989).

With his June 22, 2000 request for reconsideration, appellant submitted a copy of his occupational claim dated December 10, 1980 for hepatitis and a report dated June 26, 2000 from Dr. Gary M. Smith, a Board-certified internist. In his report, Dr. Smith stated that he treated appellant for chronic hepatitis with associated myalgias and arthralgias due to the chronic hepatitis and that previous treatments had failed although appellant was responding well to prescribed massage therapy. Appellant also submitted a progress note dated May 19, 2000, a patient ledger report showing payments appellant made for treatment of his hepatitis dated September 2, 1998 through August 6, 1999 and a report dated May 25, 1999 from Dr. Robert K. Rush, a Board-certified family practitioner, stating that appellant had a 29 percent impairment of nonspecific hepatitis.

By decision dated November 7, 2000, the Office denied appellant's reconsideration request.

The Board finds that the Office properly denied appellant's requests for reconsideration pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must 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.<sup>2</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup>

In this case, none of the evidence appellant submitted to support his requests for reconsideration are relevant to the legal issue that the liver does not come within the schedule provisions of the Act and its regulations.<sup>4</sup> Dr. Rush's May 25, 1999 report and appellant's December 10, 1980 occupational claim were previously in the record. The massage therapy notes dated May 19 to June 13, 2000, Dr. Smith's June 26, 2000 report and the patient ledger report dated September 2, 1998 through August 6, 1999 document appellant was being treated for hepatitis and it made him feel achy but do not show an error in the Office's application of the law. Appellant had previously argued that his liver should be covered by the schedule because it affects all parts of his body. Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, appellant has failed to establish his claim.

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<sup>2</sup> Section 10.606(b)(2)(i-iii).

<sup>3</sup> Section 10.608(a).

<sup>4</sup> See *Thomas E. Stubbs*, *supra* note 1.

The November 7, June 19, April 25 and January 21, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 18, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member