

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY A. SPENCER and RAILROAD RETIREMENT BOARD,
OFFICE OF THE INSPECTOR GENERAL, Chicago, IL

*Docket No. 01-1172; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits.

Appellant, a 46-year-old auditor, filed a notice of traumatic injury on February 5, 1998 alleging that on January 29, 1998 she developed eye, nose, throat and skin irritation due to a chemical exposure in the performance of duty. The Office accepted her claim for allergic conjunctivitis on January 24, 1998. By decision dated April 14, 1998, the Office denied appellant's claim for continuation of pay finding that she had not established disability due to her accepted condition. Appellant requested an oral hearing. By decision dated December 31, 1998, the hearing representative stated that appellant was claiming that additional exposures at the employing establishment resulted in her current condition. She found that the employing establishment submitted evidence that appellant had experienced only one exposure, a traumatic injury. The hearing representative denied appellant's claim finding that she failed to submit medical evidence based on a complete and accurate factual background.

Appellant requested reconsideration on March 14, 2000 and submitted new medical evidence. By decision dated March 21, 2000, the Office declined to reopen appellant's claim for consideration of the merits finding that she failed to submit relevant and pertinent new evidence with her request for reconsideration.¹

The Board finds that the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits based on her March 13, 2000 request for reconsideration.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that

¹ Appellant submitted additional evidence following the Office's March 21, 2000 decision, however, as the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.²

In this case, appellant submitted new medical evidence not previously considered by the Office. In a report dated June 3, 1999, Dr. Kathy Duvall, a physician Board-certified in preventative medicine, and Dr. Eugenia Cheng, a resident physician, in a joint report, stated that appellant was exposed to Sentinel 747 on January 29, 1998 and that appellant had no further exposure to this chemical but that she continued to experience symptoms at the employing establishment. They related appellant's medical history following the accepted employment exposure and diagnosed reactive airway disease syndrome based on a positive methacholine challenge test. This report is based on an accurate history of exposure as accepted by the hearing representative and is relevant to the issue for which appellant's claim was denied and the lack of medical evidence based on a proper factual background. Therefore, this report is relevant, pertinent new evidence and is sufficient to require the Office to reopen appellant's claim for review of the merits.

On remand, the Office should review all the evidence³ submitted with appellant's request for reconsideration and issue a merit decision.

The March 21, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
May 8, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

² 5 U.S.C. §§ 10.609(a) and 10.606(b).

³ Appellant submitted several hundred pages of evidence with her reconsideration request. This includes several medical reports dated after the hearing representative's December 1998 decision.