

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANNE M. McGUINNESS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Jamaica, NY

*Docket No. 02-1208; Submitted on the Record;  
Issued November 25, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

This is the third appeal in the present case. In the first appeal, the Board issued a decision on May 26, 2000 in which it affirmed a July 7, 1997 decision, finding that the Office properly suspended appellant's benefits for obstructing a medical examination.<sup>1</sup> In the second appeal, the Board issued a decision dated March 26, 2000 granting appellant's request to dismiss her appeal involving the Office's determination regarding an overpayment.<sup>2</sup> The facts and the circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

By letter dated October 1, 2001, appellant requested reconsideration of the suspension of her benefits. In support of her request, she submitted a May 23, 2001 letter from the Board,<sup>3</sup> her undated request for reconsideration received by the Board on May 22, 2001, a brochure from

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<sup>1</sup> Docket No. 98-299. On October 19, 2000 the Board denied appellant's petition for reconsideration.

<sup>2</sup> Docket No. 01-817.

<sup>3</sup> In this letter, the Board informed appellant that her appeal had been docketed as 01-817 and advised her that new evidence cannot be considered with her appeal. She indicated that as the Board had her file she wanted to have her "reconsideration request placed in the official file."

The American Registry of Diagnostic Medical Sonographers (ARDMS), a letter from Franklin W. West, a transcript from a television show regarding credentials for ultrasound testing and statements by her and Dr. Mohiuddin's staff.<sup>4</sup>

By nonmerit decision dated February 25, 2002, the Office denied appellant's request for reconsideration on the basis that she failed to submit new and relevant evidence or present legal arguments not previously considered.

The Board finds that the Office properly denied appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>5</sup> As appellant filed her appeal with the Board on March 19, 2002, the only decision before the Board is the Office's February 25, 2001 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, 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>6</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meet at least one of the standards described in section 10.606(b)(2).<sup>7</sup> If reconsideration is granted, the case is reopened and reviewed on the merits.<sup>8</sup>

In this case, appellant did not submit any new and relevant evidence in support of her October 1, 2000 request for reconsideration of the Board's May 26, 2000 decision, which affirmed the Office decision suspending her compensation for obstruction of a medical examination, nor has she submitted any new and relevant evidence not previously submitted.

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<sup>4</sup> As noted in the Board's decision dated May 26, 2000, the Office referred appellant to Dr. Sultan Mohiuddin, a Board-certified surgeon and thoracic surgeon, for testing to ascertain nature and extent of her claimed thoracic outlet syndrome pursuant to Dr. de Lanerolle's recommendation for a vascular evaluation in her December 5, 1996 and February 26, 1997 reports.

<sup>5</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>8</sup> *Id.*

With her October 1, 2001 request for reconsideration, she submitted her undated request for reconsideration which was received by the Board on May 22, 2001, a brochure from ARDMS, a letter from Mr. West, transcript from a television show regarding credentials for ultrasound testing and statements by her and Dr. Mouhiddian's staff. The statements submitted by appellant had been previously submitted and considered. As noted above, material, which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.<sup>9</sup> Contrary to appellant's contentions, the brochure from ARDMS, letter from Mr. West and transcript from a television show, in which Mr. West was a guest, regarding credentials for ultrasound testing are of general application and are not relevant to the issue of whether the Office properly suspended her benefits for obstructing a medical examination. Whether the nurse was certified or not is not relevant to the issue of whether she obstructed a medical examination. Additionally, as noted above, the Board previously considered appellant's contentions about the nurse. Thus, the Office properly found that appellant had failed to submit new and relevant evidence.

Appellant presented several arguments in support of the request. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening for further review of the merits is not required where the legal contention does not have a reasonable color of validity.<sup>10</sup> She argued that her due process rights were violated when the Office failed to allow her a chance to respond. Appellant also alleged abuses of discretion when the Office relied upon Dr. Mouhiddian's statement and when the Office found that she had turned off her tape recorder when she had not. As the Board stated in its May 26, 2000 decision, the Office was not required to ask appellant for her reasons for obstructing an examination. Office procedures requires only that a claimant be asked to give reasons for a failure to appear for a scheduled examination and there is no such requirement when a claimant obstructs an examination.<sup>11</sup> Moreover, this assertion is essentially repetitive as the Board previously considered such assertions by appellant when it affirmed the Office's suspension of benefits.<sup>12</sup> Her arguments regarding her tape recording were previously considered in the Board's prior decision, which found that appellant obstructed her examination. Furthermore, as the Board's prior decision regarding the suspension of benefits does not indicate that the Office failed to follow its procedures or regulations regarding a suspension of benefits, appellant's due process argument has no reasonable color of validity.<sup>13</sup> The Board has the final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director of the Office. Otherwise there could be no finality of decisions and the whole appeals procedure would be nullified and questions would

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<sup>9</sup> *Vincent Holmes*, 53 ECAB \_\_\_\_ (Docket No. 00-2644, issued March 27, 2002).

<sup>10</sup> *Vincent Holmes*, *supra* note 9; *Arlesa Gibbs*, 53 ECAB \_\_\_\_ (Docket No. 01-113, issued November 2, 2001).

<sup>11</sup> *See Ida L. Thomson*, 45 ECAB 759 (1994).

<sup>12</sup> *See Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

<sup>13</sup> *See Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949) (final decisions of the Board are binding upon the Office).

remain moot.<sup>14</sup> Appellant's arguments regarding the Office's abuse of discretion and failure to provide her due process lack any reasonable color of validity.

The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly denied the October 1, 2001 request for reconsideration without merit review of the claim.

The decision of the Office of Workers' Compensation Programs dated February 25, 2002 is hereby affirmed.

Dated, Washington, DC  
November 25, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> *Id.*