

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY LEWIS and GOVERNMENT PRINTING OFFICE,
Washington, DC

*Docket No. 02-1670; Submitted on the Record;
Issued November 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On October 26, 2000 appellant, then a 36-year-old clerk, filed a claim alleging that she developed chronic sinusitis due to her office environment. She alleged that her exposure to "a highly concentrated body/oil perfume" in the office environment caused "sinus irritation, inflammation and infections established over an eight-month period." The employing establishment noted that appellant initially reported her condition in July 2000 and that her last day at work was August 29, 2000.

In support of her claim, appellant submitted various memoranda from July 31 to August 28, 2000, sent to her supervisor noting the excessive and allegedly hostile use of body oils and fragrances by her coworkers who were aware of the adverse physical impact such oils and fragrances had on her.

In a report dated October 3, 2000, Dr. Ziad E. Deeb, a Board-certified otolaryngologist, stated that appellant underwent endoscopic sinus surgery on September 6, 2000 and was seen on follow-up on September 9, 15 and 22, 2000 with continued drainage.

In a report dated October 16, 2000, Dr. Edward S. Yanowitz, Board-certified in allergy and immunology, stated that appellant's testing "revealed negative results to inhalants and food." He added, however, that appellant's exposure to "highly concentrated body oils and perfumes in her workplace ... certainly could constitute an irritant, ... and could indeed cause sinus inflammation and or infection." He added that appellant related a 5- to 10-year history of mostly spring and summer sinus problems.

By letter dated November 21, 2000, the Office advised appellant regarding the kind of information she would need to submit to establish her claim. In a report dated August 28, 2000, Dr. James S. Jelinek, Board-certified in radiology, noted that appellant's computerized

tomography (CT) maxillofacial scan revealed “opacification of the right ethmoid and right maxillary sinus with evidence of destructive changes, suggesting underlying infection and or tumor.”

In a report dated November 13, 2000 and received on December 1, 2000, Dr. Deeb recommended that appellant be transferred from her work environment “to a more healthy place not associated with inhaled irritants, which would promote a recurrence of her disease.”

In a report dated November 17, 2000 and received on December 1, 2000, Dr. Yanowitz stated that appellant had sinus surgery on October 16, 2000 which “found a large fungal mass in her right ethmoid and maxillary sinuses. He noted appellant’s history of injury stating that appellant’s sinus problems have become significantly worse since “exposed to body oils and perfumes of her coworkers at work.” Dr. Yanowitz recommended that appellant be isolated from her coworkers who have strong perfume and body oils that “could contribute to her medical condition.”

By decision dated January 30, 2001, the Office denied appellant’s claim on the grounds that she provided insufficient medical opinion that associated a specific substance she inhaled in the workplace with her medical condition.

By letter dated January 30, 2002, appellant requested reconsideration. The record fails to disclose that appellant submitted any evidence pursuant to her January 30, 2002 request for reconsideration. By decision dated April 2, 2002, the Office denied reconsideration of her claim.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends to those decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on June 17, 2002, the only decision before the Board is the Office’s April 2, 2002 decision denying appellant’s request for reconsideration.

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

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may--

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”²

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8128(a).

interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2) or where the request is untimely and fails to present any clear evidence of error, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

The Board finds that appellant did not provide any new and relevant evidence or raise any substantive legal arguments not previously considered sufficient to warrant a merit review. Appellant also did not argue that the Office erroneously applied or interpreted a point of law. Consequently, appellant is not entitled to a merit review of her claim based upon the requirements under 20 C.F.R. § 10.606(b)(2). Accordingly, the Board finds that the Office acted within its discretion in denying appellant's request for reconsideration.

The April 2, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 4, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).