

**United States Department of Labor
Employees' Compensation Appeals Board**

DONNA L. SHAHIN, Appellant

and

**DEPARTMENT OF DEFENSE,
UNIFORMED SERVICES UNIVERSITY,
Bethesda, MD, Employer**

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**Docket No. 02-1597
Issued: December 23, 2003**

Appearances:

Subhi H. Shahin, for the appellant

Thomas G. Giblin, Esq., for the Director

Oral Argument November 5, 2003

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 10, 2002 appellant filed a timely appeal from the March 22, 2002 decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration of whether she was entitled to an attendants allowance. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision by the Office. Because the Office has not issued a decision on the merits of the claim within the year prior to the June 10, 2002 filing of the appeal, the Board has no jurisdiction to review the merits.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On February 26, 1989 appellant, then a 37-year-old research chemist, filed a claim for compensation, which the Office accepted for major depressive reaction. She received compensation for temporary total disability on the periodic rolls.

On November 16, 1994 appellant inquired about applying for an attendants allowance. After developing the factual and medical evidence, the Office issued a decision on February 15, 1996 denying payment of compensation for an attendant. Appellant had made no mention of needing assistance with basic personal functions, such as feeding, dressing or bathing and the medical evidence demonstrated that she was capable of performing such functions. On January 31, 1997 an Office hearing representative affirmed the February 15, 1996 decision and denied compensation for a hospital day treatment program.

Appellant appealed to the Board. Following an oral argument on March 1, 2000, the Board issued an April 24, 2000 decision finding that appellant had not established her entitlement to an attendants allowance.¹ The Board explained that, if appellant were so helpless as to require constant attention because of disability resulting from her accepted major depressive reaction, she could qualify for an attendants allowance under 5 U.S.C. § 8111(a). In an August 30, 1996 report, however, appellant's attending psychiatrist, Dr. Karen C. Alleyne, noted that appellant was unable to care for her basic daily needs because of a severe post-traumatic stress disorder. As the Office had not accepted this condition as related to appellant's employment, the record failed to establish entitlement to an attendants allowance. The Board also found that the Office properly denied appellant's request for at least 120 days of full-time day treatment. The Board affirmed the Office's January 31, 1997 decision.

Appellant petitioned the Board to reconsider its decision. On December 8, 2000 the Board issued an order denying appellant's petition for reconsideration.²

On April 10, 2001 appellant filed an application for reconsideration with the Office. She submitted a May 16, 2000 report from Dr. Alleyne, who stated as follows:

"[Appellant] is being treated for a severe [p]ost[-t]raumatic [s]tress [d]isorder. Major depression and severe anxiety are a part of the manifestations of this disorder. There is no disagreement between her initial diagnosis and her current diagnosis. The depression that resulted from her past employment is the same illness that has always been a part of her [p]ost[-t]raumatic [s]tress [d]isorder."

In a decision dated March 22, 2002, the Office denied appellant's request for reconsideration of whether she was entitled to an attendants allowance. The Office found that the evidence submitted in support of appellant's request for reconsideration was immaterial and insufficient to warrant a review of its prior decision.³

¹ Docket No. 97-1895 (issued April 24, 2000).

² Docket No. 97-1895, *petition for recon. denied* (issued December 8, 2000).

³ In a memorandum attached to the March 22, 2002 decision, the Office noted that appellant was employed by the Department of Defense in Bethesda, Maryland, "when she incurred a major depressive reaction with post[-]traumatic stress disorder." This recitation of the facts is in error. The record clearly establishes that the Office accepted appellant's claim only for major depressive reaction.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁴

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.⁵

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Appellant's April 10, 2001 application for reconsideration did not attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Instead, appellant submitted the May 16, 2000 report of Dr. Alleyne who explained that major depression and severe anxiety were a part of the manifestations of post-traumatic stress disorder and that the depression which resulted from appellant's past employment was the same illness that had always been a part of her post-traumatic stress disorder. While this medical opinion evidence is new, the Board finds that it is not relevant to the issue of appellant's need for an attendants allowance. Dr. Alleyne did not address appellant's need for such an allowance. She offered no explanation of whether appellant was so helpless, because of disability resulting from her accepted major depressive reaction, that she required constant attention and assistance in performing such personal needs as feeding, dressing, bathing or using the toilet. Appellant's representative conceded on the prior appeal that appellant was capable of feeding, dressing, bathing and using the toilet herself. He argued that appellant would not get out of bed without extreme prompting, an argument repeated in the current appeal. Dr. Alleyne's May 16, 2000 report addressed none of this. To the extent

⁴ 20 C.F.R. § 10.605 (1999).

⁵ *Id.* at § 10.606.

⁶ *Id.* at § 10.608.

that she diagnosed appellant with post-traumatic stress disorder, the Board finds that her report is duplicative of reports previously submitted and considered by the Office.

Because appellant's April 10, 2001 application for reconsideration failed to meet any of the three standards for obtaining a merit review of her claim, the Board will affirm the denial of her reconsideration request.⁷

CONCLUSION

The Office properly denied a merit review of whether appellant is entitled to an attendants allowance.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2002 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 23, 2003
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ On appeal, appellant's representative objected to the Director's memorandum in justification of the Office's decision on the grounds that it was filed in violation of 20 C.F.R. § 501.4, which states that the Director shall file a statement in support of his decision, or other pleading, as appropriate within 60 days of being served with a copy of the application for review. The Board's procedures provide no sanction for failing to submit such a pleading within 60 days. Indeed, the Board's procedures do not require the Director to file a pleading at all. *Thomas D. Mooney*, 44 ECAB 241 (1992). Proceedings before the Board are informal in nature and the Board's procedures are intended to assist the Board in considering cases on appeal. *See also John J. Benson*, 4 ECAB 465 (1951).