

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY TIFT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Lyons, NJ

*Docket No. 02-2336; Submitted on the Record;
Issued February 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on June 24, 2002.

Appellant, a 46-year-old cook, filed a notice of traumatic injury alleging that on June 21, 2000 he experienced low back muscle spasms due to food handling. The Office requested additional factual and medical information by letter dated August 11, 2000. Appellant responded and stated that he was pushing a tier truck weighing 150 pounds when he experienced severe pain in his lower back and legs. Appellant also submitted a May 31, 2000 magnetic resonance imaging (MRI) scan report which diagnosed herniated disc at L5-S1.

By decision dated November 7, 2000, the Office denied appellant's claim finding that he had not submitted sufficient medical evidence to establish that he sustained an injury on June 21, 2000 as alleged. Appellant, through his attorney, requested an oral hearing. He testified on April 26, 2001 that he initially injured his back on May 17, 2000 and that he had filed a separate claim for that injury. By decision dated July 20, 2001, the hearing representative denied appellant's claim finding that there was no medical reasoning supporting appellant's claim that the June 21, 2000 employment injury caused or aggravated appellant's herniated disc at L5-S1. The hearing representative explicitly limited his findings to the June 21, 2000 injury.¹

Appellant, through his attorney, requested reconsideration on March 28, 2002. By decision dated June 24, 2002, the Office declined to reopen appellant's claim for consideration of

¹ As the Office issued this decision more than one year prior to the date of appellant's request for appeal on September 23, 2002, the Board will not consider this decision nor the merits of appellant's claim on appeal; *see* 20 C.F.R. § 501.3(d)(2).

the merits on the grounds that his request for reconsideration did not contain new evidence or new legal argument.²

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on June 24, 2002.

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 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.³ Appellant's request for reconsideration did not contain additional argument. His attorney alleged that additional medical evidence accompanied the request. However, the Office did not receive any attachments with the March 28, 2002 request. As the request did not contain additional argument nor evidence, the Office properly declined to reopen appellant's claim for consideration of the merits.

The decision of the Office of Workers' Compensation Programs dated June 24, 2002 is hereby affirmed.

Dated, Washington, DC
February 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

² Following the Office's June 24, 2002 decision, appellant submitted additional new evidence to the Office. As the Office did not consider this evidence in reaching a final decision, the Board will not consider it on appeal. 20 C.F.R. § 501.2(c).

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