

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEATRICE E. MARSHALL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO

*Docket No. 02-2157; Submitted on the Record;
Issued January 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

This is the second appeal in this case.¹ On July 24, 2001 the Board affirmed the Office's decisions denying appellant's September 29, 1999 claim for employment-related right carpal tunnel syndrome on the grounds that the record contained no medical evidence which contained a rationalized medical opinion on the causal relationship, if any, between appellant's work duties and her diagnosed right carpal tunnel syndrome. The facts of this case, as set forth in the Board's July 24, 2001 decision, are incorporated herein by reference.

Subsequent to the Board's decision, by letter dated August 7, 2001, appellant requested reconsideration of the prior decision. By decision dated November 7, 2001, the Office found her reconsideration request to be insufficient to warrant further merit review of her claim.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The only decision before the Board in this appeal is the Office's decision dated November 7, 2001 denying appellant's application for a review. Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).² This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii)

¹ Docket No. 00-2479 (issued July 24, 2001).

² 20 C.F.R. § 10.608(a) (1999).

constitutes relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

The relevant issue in this case is medical in nature. Appellant's claim was denied because of insufficient rationalized medical evidence to establish a causal relationship between her diagnosed right carpal tunnel syndrome and her employment. In her letter requesting reconsideration, appellant stated that her right hand pain started after she began working for the employing establishment, reiterated her job duties and explained why she elected to undergo right carpal tunnel release surgery. She also stated that while she performed regular household chores outside of work, she did not perform the type of heavy lifting and strenuous work she performed at her job. Appellant did not raise any legal arguments or submit any medical reports in support of her request for a further review. The only medical evidence of record which was not previously considered by the Office and the Board is an October 19, 1999 operative report from Dr. Richard Gelberman, describing the right carpal tunnel release surgical procedure, which was received by the Office subsequent to its July 20, 2000 final merit decision. While this medical report is new to the record, as Dr. Gelberman does not discuss the causal relationship, if any, between appellant's work duties and her diagnosed right carpal tunnel syndrome. His report is irrelevant to the issue in the case and, therefore, is insufficient to warrant further merit review.⁵

As appellant submitted no medical evidence which addresses the relevant issue in this claim and as she failed to raise substantive legal questions or show that the Office erroneously applied or interpreted a specific point of law, the Office did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits.

³ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ *James E. Salvatore*, 42 ECAB 309 (1991).

The decision of the Office of Workers' Compensation Programs dated November 7, 2001 is hereby affirmed.

Dated, Washington, DC
January 21, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member