

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PEGGY E. WILKINSON, claiming as widow of JACK H. WILKINSON,  
and DEPARTMENT OF DEFENSE, INVESTIGATIVE SERVICE, Grants Pass, OR

*Docket No. 03-2010; Submitted on the Record;  
Issued October 21, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen this case for reconsideration of the merits of appellant's claim for death benefits.

On December 22, 1983 appellant filed a claim for compensation by widow indicating that her husband's death on December 15, 1983 was a result of his March 2, 1977 employment injury. The Office had accepted that her husband sustained a myocardial infarction and depression while in the performance of his duties. He received compensation for temporary total disability on the periodic rolls until his death.

In a decision dated February 26, 1986, the Office denied appellant's claim for death benefits. The Office found that she failed to submit a reasoned medical opinion to support that her husband's death was causally related to his accepted employment injury. In an attached statement of review rights, the Office notified appellant that she could request reconsideration of her claim at any time.

Appellant requested reconsideration on March 18, 1986. In a decision dated March 31, 1986, the Office refused to reopen the case for reconsideration of the merits of her claim. The Office again advised that she could request reconsideration at any time.

In or about November 2001, appellant inquired about her claim for death benefits. In later correspondence, she stated that the denial of her claim made no sense to her because her husband was totally disabled and was paid compensation for disability until his death. She submitted copies of documents previously of record, including her husband's death certificate; a receipt for funeral expenses; a May 21, 1979 report from Dr. Herbert E. Griswold, a professor of medicine and cardiologist; a January 4, 1984 attending physician's report from Dr. Warren G. Griffith, a family practitioner; her husband's enrollment in the periodic compensation rolls; and an April 11, 1978 report from Dr. Griswold. The Office considered appellant's request to be a request for reconsideration.

In a decision dated May 13, 2003, the Office refused to reopen the case for reconsideration of the merits of appellant's claim for death benefits. The Office found that she failed to provide sufficient evidence to warrant a merit review. Appellant made no legal argument and though she submitted numerous documents none contained information not previously considered.

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>1</sup> In this case, the Office issued its last merit decision on February 26, 1986. The March 31, 1986 and May 13, 2003 decisions of the Office did not reach the merits of the case. As appellant filed her appeal with the Board on August 11, 2003, the only decision properly before the Board is the Office's May 13, 2003 decision denying appellant's request for merit review.

The Board finds that the Office properly refused to reopen this case for reconsideration of the merits of appellant's claim for death benefits.

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."<sup>2</sup>

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.<sup>3</sup>

Appellant's application for review meets none of these standards. It does not show that the Office erroneously applied or interpreted a specific point of law, it advances no relevant legal argument not previously considered and it contains no relevant and pertinent new evidence not previously considered. She expressed her despair over the denial of her claim and stated that it made no sense to her. All of the medical reports she submitted to support her application were previously submitted to the record and considered by the Office. Moreover, only Dr. Griffith's attending physician's report postdates the employee's death on December 15, 1983 but it offers

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2) (1999).

<sup>2</sup> 20 C.F.R. § 10.605 (1999).

<sup>3</sup> *Id.* § 10.606. A one-year limitation for requesting reconsideration became effective on June 1, 1987. FECA Bulletin No. 87-40 (issued June 26, 1987) states in relevant part: "It has been determined that where an application for review is denied based on the ground that the claimant has not met the requirements [for obtaining a merit review] and the decision being disputed was issued prior to June 1, 1987, the claimant should be notified of the one-year time limitation for requesting further review. It is not necessary to deny the application and wait for the claimant to submit sufficient evidence for a merit review before implementing the new one-year time limitation."

no opinion on whether his death was a result of the accepted myocardial infarction in 1977. Neither of Dr. Griswold's reports addresses the issue. None of the other documents submitted is relevant.

Because appellant's application for review fails to meet at least one of the standards for obtaining a merit review of her claim, the Board will affirm the Office's refusal to reopen the case.<sup>4</sup>

The May 13, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 21, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> *See Id.* § 10.608(b) (where the request fails to meet at least one of the standards, the Office will deny the application without reopening the case for a review on the merits).