

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BROOK L. BEESLEY and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Alameda, CA

*Docket No. 00-905; Oral Argument Held August 18, 2003;
Issued September 9, 2003*

Appearances: *Brook L. Beesley, pro se; Jim C. Gordon, Jr., Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

On April 20, 1997 appellant, then a 37-year-old firefighter, filed an occupational disease claim for toxic exposure to human carcinogens. Appellant alleged that he was potentially exposed to polychlorinated biphenyl (PCB) and by-products. Although appellant did not indicate a specific disease or illness, he identified March 12, 1997 as the date he first became aware of his condition. He later described his illness as a "skin condition" and "elevated liver function blood tests (LFT), past and present."

The Office requested that appellant submit a comprehensive medical opinion regarding his claimed condition and its relationship to his federal employment. In a letter dated July 28, 1997, the Office asked appellant to submit a medical report that included a definitive diagnosis of any PCB-related condition, prognosis, treatment plan and a statement regarding the relationship of the condition to factors of his federal employment."

In a report dated July 30, 1997, Dr. Michael R. Lozano, a Board-certified internist, indicated that appellant's liver enzymes tests revealed persistent mild elevation. Dr. Lozano noted that hepatitis A, B and C studies were normal and serum PCB levels were found to be within normal limits. A liver ultrasound was also normal. He explained that PCBs could cause liver dysfunction and had been shown to produce hepatocellular carcinomas in test animals; however, human epidemiologic studies revealed no excess of deaths from cancer in workers exposed to PCBs. Dr. Lozano referred appellant to a gastroenterologist for evaluation of his elevated liver enzymes and a determination of whether his liver problem was secondary to PCBs and dioxins. Appellant, however, failed to keep the appointment. As appellant did not complete

the recommended work-up, Dr. Lozano indicated that he could not provide a definitive etiology of appellant's liver function elevation. He surmised that the noted abnormalities could be secondary to a fatty liver condition, which would be of no consequence. Dr. Lozano added that appellant was asymptomatic and had no evidence of chloracne.

By decision dated August 22, 1997, the Office denied appellant's claim. The Office found that the medical evidence of record did not include a definite of a compensable medical condition.

Appellant requested an oral hearing, which was held on April 13, 1998. In a decision dated June 19, 1998, an Office hearing representative affirmed the August 22, 1997 decision on the grounds that appellant failed to establish that he sustained a disease or condition causally related to his employment.

On June 15, 1999 appellant requested reconsideration and submitted correspondence from the U.S. Office of Special Counsel dated March 29, 1999. The letter advised appellant that his allegations concerning toxic exposure at the Alameda Naval Air Station had been forwarded to the Secretary of the Navy for comment.

By decision dated September 1, 1999, the Office denied appellant's request for reconsideration.

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.¹ The Office issued its most recent merit decision on June 19, 1998 followed by the September 1, 1999 decision denying reconsideration. The instant appeal was postmarked November 23, 1999 and received by the Board on November 29, 1999. At oral argument, appellant urged the Board to exercise jurisdiction over the merits of his claim. He contended that for good cause, the Board could review the merits of his claim notwithstanding the fact that he filed his appeal more than one year after the Office's last merit decision dated June 19, 1998.

With regard to the time limitations for filing an appeal with the Board, section 501.3(d)(1) of Title 20 of the Code of Federal Regulations provides in relevant part: "Except as provided in paragraph (d)(2) of this section, any application for review by a person residing within the United States ... must be filed within 90 days from the date of issuance of the final decision of the Director..."² Paragraph (d)(2) provides that "For good cause shown, the Board may in its discretion waive a failure to file an application within the time limitations provided in paragraph (d)(1) of this section, but for no longer than one year from the date of issuance of the final decision of the Director."³ A claimant is required to file an appeal within 90 days of issuance of the Director's decision; however, the Board has the discretion to extend the filing period to a maximum of one year from the date of issuance of the decision. The Board routinely

¹ 20 C.F.R. § 501.3(d)(1), (d)(2); *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999).

² 20 C.F.R. § 501.3(d)(1).

³ 20 C.F.R. § 501.3(d)(2).

exercises its discretion to extend the appellate filing period to the maximum time allotted under the regulations. However, neither the Federal Employees' Compensation Act nor the regulations specifically vest the Board with any discretionary authority to extend the filing date for an appeal beyond one year from the date of issuance of the Office's final decision.

Appellant's argument that the one-year time limitation for filing an appeal should be waived for good cause shown is without merit. In the instant case, appellant waited almost one year after the Office's June 19, 1998 merit decision, before filing his June 15, 1999 request for reconsideration. The Office issued a timely decision denying reconsideration on September 1, 1999. Appellant then filed an appeal with the Board that was postmarked November 23, 1999 and received on November 29, 1999. Had appellant wished to preserve his right to an appeal of the merits of his claim, he could have filed an appeal with the Board up until June 19, 1999. The only decision the Board currently has jurisdiction to review is the Office's September 1, 1999 decision denying reconsideration.

The Board finds that the Office properly denied appellant's June 15, 1999 request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

The June 15, 1999 request for reconsideration indicated that appellant was seeking reconsideration on the basis of relevant and pertinent new evidence not previously considered by the Office. Appellant advised the Office of an ongoing investigation by the U.S. Office of Special Counsel, which he anticipated would result in the development of further medical information regarding causal relationship. Appellant's June 15, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted the March 29, 1999 correspondence from the U.S. Office of Special Counsel. The letter advised appellant that his allegations regarding toxic exposure in the workplace had been forwarded to the Secretary of the Navy for comment and that the Office of Special Counsel would contact appellant when the Secretary's

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

report was received. The dispositive issue on reconsideration was whether the evidence of record established that appellant sustained a disease or condition causally related to his employment. The March 29, 1999 correspondence does not address this particular medical issue. As the evidence submitted on reconsideration is not relevant to the issue of whether appellant has a compensable medical condition, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).⁶

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's June 15, 1999 request for reconsideration.⁷

The September 1, 1999 decision of the Office of Worker's Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 9, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140, 142 (2000).

⁷ Appellant submitted evidence on appeal that he had not previously submitted to the Office prior to the issuance of its September 1, 1999 decision. The Board's review is limited to the evidence of record that was before the Office at the time of its last decision. The Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).