



## **FACTUAL HISTORY**

On September 20, 1988 appellant, then a 34-year-old microbiologist, filed an occupational disease claim for a post-traumatic stress syndrome which she attributed to her federal duties arising on or about February 11, 1985. Appellant stopped work on February 11, 1985 and has not returned. The Office accepted appellant's claim for post-traumatic stress syndrome and began paying appropriate benefits.

Appellant thereafter came under the care of Dr. Bert E. Simpson, a Board-certified psychiatrist, who submitted medical reports advising that appellant was unable to work due to her accepted condition.

The Office continued to develop the claim and on April 24, 2001 referred appellant, together with a statement of accepted facts, a set of questions and a copy of the case record, to Dr. Sharon Romm, a Board-certified psychiatrist, for a second opinion evaluation. In a May 7, 2001 report, Dr. Romm opined that appellant no longer had post-traumatic stress disorder as defined in the DSM IV. She stated that, although appellant experienced anxiety, she had recovered from the effects of her employment. Dr. Romm opined that, while appellant was not capable of returning to work in her former position or participating in vocational rehabilitation for other employment, appellant's limitations arose from her own perceptions and were self-imposed limitations.

On July 26, 2001 the Office issued a proposed notice of termination of compensation. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Romm, established that appellant's accepted emotional condition had resolved.

On July 29, 2001 appellant responded, expressing concern over the proposed termination. She submitted additional medical evidence, including a September 4, 2001 report from Dr. Simpson who disagreed with Dr. Romm's conclusions. He advised that he had not seen appellant since November 1, 2000, reiterated that he had treated her since July 1991 and reiterated that she had not been successful in returning to a workplace like environment or had any potential for vocational rehabilitation or other employment. Dr. Simpson opined that, based on his treatment of appellant since July 1991, her emotional condition caused by work-related factors had not resolved.

By decision dated September 14, 2001, the Office terminated compensation and medical benefits effective September 22, 2001 on the basis that the weight of the medical evidence established that appellant no longer had residuals of the accepted condition.

In a September 20, 2001 letter, appellant, through her attorney, disagreed with the Office's decision and requested a hearing, which took place on March 27, 2002.

By decision dated July 16, 2002, an Office hearing representative affirmed the September 14, 2001 decision. The hearing representative found that the weight of the medical opinion evidence rested with the report of Dr. Romm and established that appellant's employment-related injury had ceased.

In a July 16, 2003 letter, appellant, through her attorney, requested reconsideration, contending that the Office hearing representative erred in finding that Dr. Simpson was unable to relate the accepted condition to her existing medical condition. He noted that Dr. Simpson had treated appellant for 11 years and was more familiar with her medical condition. Appellant also contended that Dr. Simpson's hearing testimony was sufficient to find a conflict in medical opinion with that of Dr. Romm and she should be referred for an impartial medical examination.

By decision dated August 25, 2003, the Office denied appellant's request for reconsideration on the grounds that the arguments raised were repetitious in nature.

### **LEGAL PRECEDENT**

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.<sup>1</sup> Section 10.608(b) provides that when an application for review of the merits of a claim 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.<sup>2</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>3</sup>

### **ANALYSIS**

In the present case, in its decision dated August 25, 2003, the Office denied appellant's claim on the grounds that the arguments submitted were repetitious in nature. Because more than one year has elapsed between the last merit decision dated July 16, 2002, which terminated appellant's compensation benefits, and the filing of this appeal on November 21, 2003, the Board lacks jurisdiction to review the merits of appellant's termination decision.<sup>4</sup>

In the July 16, 2003 reconsideration request, appellant's attorney argued that Dr. Simpson found that appellant's current condition was related to her employment factors and pointed out various statements made by Dr. Simpson. The Board finds that appellant's attorney has presented no new legal argument nor has he shown that the Office misapplied the law. His arguments are repetitious of those previously considered, and fail to show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office.<sup>5</sup> Thus, appellant's request for reconsideration neither alleged nor

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<sup>1</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>2</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>3</sup> *Annette Louise*, 54 ECAB \_\_\_\_ (Docket No. 03-335, issued August 26, 2003).

<sup>4</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2); *see John Reese*, 49 ECAB 397, 399 (1998).

<sup>5</sup> *See Robert P. Mitchell*, 52 ECAB 116 (2000).

demonstrated that the Office erroneously applied or interpreted a specific point of law. Consequently, appellant is not entitled to a review of the merits of her 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, the Board notes that appellant did not submit any new evidence with her request for reconsideration. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 25, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member