

FACTUAL HISTORY

The case was before the Board on a prior appeal.² As the Board noted in its prior appeal, the Office had accepted a left arm contusion in the performance of duty on November 11, 1995; by decision dated November 6, 1998, the Office determined that residuals of the employment injury had ceased. By decision dated February 2, 2000, the Office determined that appellant's November 8, 1999 reconsideration request was untimely. The Board found that appellant's request for reconsideration was timely; the case was remanded for an appropriate decision with respect to a timely reconsideration request.

On return of the case record, the Office determined that a conflict in the medical evidence existed between appellant's attending physicians, Drs. Thomas Reaper and Alan Moelleken, and an Office referral orthopedic surgeon, Dr. Frederick Lieb.³ In a report dated August 15, 2001, Dr. Steven Pearson, the Board-certified orthopedic surgeon selected as the impartial medical specialist, opined that, although appellant had sustained a temporary aggravation of preexisting cervical stenosis from the employment injury, the aggravation had ceased as of June 1996.

In a decision dated November 9, 2001, the Office denied modification of its November 6, 1998 decision.

In a letter dated November 10, 2002, appellant requested reconsideration of her claim. Appellant did not submit additional medical evidence. She argued that the Office did not apply the appropriate standard as directed by the Board in the prior appeal; she also inquired as to whether the Office had accepted aggravation of spinal stenosis.⁴

By decision dated December 2, 2002, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

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."⁵

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

² Docket No. 00-1285 (issued April 17, 2001).

³ The November 6, 1998 Office decision had found Dr. Lieb to be the weight of the medical evidence.

⁴ The Office advised appellant by letter dated December 2, 2002 that it accepted a temporary aggravation of cervical stenosis that resolved by June 1996.

⁵ 20 C.F.R. § 10.605 (1999).

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.⁶

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that met at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

In the present case, the underlying issue of whether appellant continued to have residuals of the employment injury after November 6, 1998 is a medical issue. Appellant did not submit any new and relevant medical evidence on this issue and, therefore, she did not meet the standard set forth at 10.606(b)(2)(iii). Her request for reconsideration appears to be based on an allegation that the Office erred by declaring a conflict on existing evidence and failing to apply the appropriate standard as directed by the Board. The prior decision by the Board, however, merely directed the Office to apply the standards for a timely reconsideration request; that is, to determine if appellant was entitled to a merit review under 5 U.S.C. § 8128(a) by applying the standards set forth at 20 C.F.R. § 10.606(b)(2). The Office reviewed the case on its merits and found a conflict between the attending physicians and Dr. Lieb, the referral physician, under 5 U.S.C. § 8123(a).⁸ This provided an opportunity for an impartial specialist to review the case and provide an opinion as to whether appellant continued to have employment-related residuals.

Appellant did not provide a valid legal argument or show that the Office erroneously applied or interpreted a point of law. The Office developed the record in accord with 5 U.S.C. § 8123(a) and issued a decision based on the opinion on the impartial medical specialist. The Board finds that appellant's November 10, 2002 request for reconsideration does not meet any of the standards set forth at 10.606(b)(2) and, therefore, the Office properly denied the request without reviewing the merits of the claim.

CONCLUSION

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit new and relevant evidence. Accordingly, appellant was not entitled to a review of the merits of her claim.

⁶ *Id.* at § 10.606(b)(2).

⁷ *Id.* at § 10.608.

⁸ Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. *Robert W. Blaine*, 42 ECAB 474 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 2, 2002 is affirmed.

Issued: April 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member