

**United States Department of Labor
Employees' Compensation Appeals Board**

ERICA COX, Appellant

and

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, Los Angeles, CA, Employer**

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**Docket No. 04-439
Issued: April 15, 2004**

Appearances:
Erica Cox, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

Appellant filed an appeal with the Board on December 9, 2003. The Board's jurisdiction is limited to decisions of the Office of Workers' Compensation Programs issued within one year prior to the filing of an appeal.¹ In this case, since appellant did not file her appeal until December 9, 2003, the Board only has jurisdiction over the January 14, 2003 decision denying reconsideration.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On June 26, 2002 appellant, a 37-year-old telephone service representative, was exposed to fumes from pepper spray and, subsequently, fumes from a cleaning spray used to clean off the residue of the pepper spray. She began experiencing watering eyes, sore throat, headache and burning eyes. Dr. Mark Goldstein, a Board-certified osteopath in family practice, noted in a

¹ 20 C.F.R. § 501.3(d) (2003).

July 12, 2002 report that appellant had a preexisting pseudotumor cerebri. He indicated that a computerized tomography scan of the head was negative. In a July 15, 2002 report, Dr. Goldstein diagnosed status post pepper spray exposure and postnasal drip, which was a nonoccupational condition. He noted that appellant was still complaining of irritation of the eyes, coughing and a sore throat approximately three weeks after her exposure to pepper spray.

In a July 8, 2002 report, Dr. William Miller, a Board-certified neurologist, indicated that appellant suffered from pseudotumor cerebri, which resulted in progressively worsening headaches. He stated that the exposure to fumes at work resulted in development of an acute worsening of her headaches.

In a September 17, 2002 decision, the Office denied appellant's claim for compensation on the grounds that she had not submitted medical evidence to establish a causal relationship between any diagnosed, objectively established medical condition and her workplace exposure on June 26, 2002.

In a January 3, 2003 letter, appellant submitted additional evidence and requested reconsideration. She contended that her exposure to fumes aggravated her preexisting pseudotumor cerebri. She submitted a November 4, 2002 note from Dr. Miller, who stated that appellant suffered from pseudotumor cerebri and cervical spondylosis. He noted that appellant's conditions caused frequent and severe headaches. He concluded that the exposure to fumes on June 26, 2002 aggravated her condition. She also submitted a July 1, 2002 form report from Dr. Goldstein, who restricted appellant to 15 minutes of talking at a time and limited work on the computer. Appellant indicated that because of Dr. Goldstein's restriction, her supervisor could not accommodate her as her job primarily involved answering telephones.

In a January 14, 2003 decision, the Office denied appellant's request for reconsideration because the medical evidence was almost identical to Dr. Miller's previous report. It also noted that the medical evidence provided no explanation on how the preexisting condition was aggravated by the exposure to fumes. The Office stated that the evidence submitted on reconsideration was repetitious and provided no new information, which would require review of that decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by

advancing a relevant legal argument not previously considered by the Office, or by constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

ANALYSIS

The only items of evidence submitted on reconsideration were the July 1, 2002 report of Dr. Goldstein and the November 4, 2002 note from Dr. Miller. Dr. Goldstein only described appellant's work limitations. His report did not address the pertinent issue of whether appellant's exposure to fumes caused an aggravation of her preexisting pseudotumor cerebri. His report is, therefore, irrelevant to the resolution of this issue. Dr. Miller's note was duplicative of his July 8, 2002 note, in which he diagnosed an aggravation of appellant's preexisting condition and related it to her exposure to fumes at work on June 26, 2002. Dr. Miller did not present any new medical evidence or analysis on how the exposure to fumes caused an aggravation of appellant's preexisting condition. His November 4, 2002 report, therefore, is insufficient to require the Office to reopen appellant's case for reconsideration of the merits of her claim.

CONCLUSION

The Board finds that appellant has not submitted any new medical evidence, which would require the Office to grant appellant's request for reconsideration.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2003 decision of the Office of Workers Compensation Programs is affirmed.

Issued: April 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member