

By letter dated November 21, 2000, the Office informed appellant that the evidence she submitted was insufficient to establish her claim, because her treating physicians did not relate her diagnosed conditions to her employment. The Office asked that appellant submit a comprehensive medical report from her treating physician which included an opinion, with supporting medical explanation, as to whether specific elements of appellant's job caused or contributed to her condition. The Office left the record open for 30 days for the submission of such evidence. In response to the Office's request, appellant submitted additional test results and progress notes from her treating physicians.

In a decision dated February 12, 2001, the Office denied appellant's claim finding that she failed to provide sufficient evidence to establish that her diagnosed back conditions are causally related to her employment.

By letter dated February 28, 2001, appellant requested an oral hearing before an Office representative. At the hearing, held on November 26, 2001, the Office hearing representative again explained the type of medical evidence required to support her claim. The hearing representative acknowledged that appellant's treating physician, Dr. Emilio S. Musso, a Board-certified orthopedic surgeon, had provided an initial opinion that appellant's condition was employment related,¹ but emphasized that appellant still needed to obtain a medical report in which the physician indicated an awareness of appellant's job duties and expanded and elaborated on how these duties caused or contributed to her condition.

Following the hearing, appellant submitted a notification of ongoing treatment, dated December 14, 2001, from Dr. Musso. He listed the diagnoses as a lumbar strain and herniated nucleus pulposus and indicated, by checking a box marked "yes," that the diagnosed conditions were employment related. Dr. Musso further stated that he reviewed appellant's job description and that appellant was released to return to work full duty. His report does not contain any discussion of appellant's specific job duties or contain a narrative explanation as to how the duties caused or contributed to the diagnosed conditions.

Also following the hearing, the employing establishment submitted the results of a February 3, 1998 MRI scan and asserted that this test result established that appellant's condition was congenital. The employing establishment further asserted that, when filing her claim for compensation, appellant reportedly stated that she had nothing to lose by alleging that her condition was work related.

In a decision dated and finalized February 27, 2002, an Office hearing representative affirmed the prior decision, finding that appellant failed to provide sufficient medical evidence to establish that her diagnosed back conditions are causally related to factors of her federal employment.

¹ In his report dated December 7, 2000, Dr. Musso stated: "[appellant] contributes that her initial accident was associated with a work injury. She contributes that she lifted some mail out of a bin and following that had her initial lumbar disc herniation. Given that history, I believe that [appellant's] initial condition and subsequent problem with her lumbar disc is work related."

By letter received May 9, 2002, appellant requested reconsideration of the Office's prior decision. She stated that additional medical evidence had been sent to the Office by her treating physicians. Appellant further stated that the employing establishment had misrepresented her statement regarding having nothing to lose by filing a claim. She explained that she had actually stated that her supervisor had told her to file the claim, as she had nothing to lose by filing.

In a decision dated May 29, 2002, the Office denied appellant's request for reconsideration on the grounds that the request neither raised substantive legal questions nor included new and relevant evidence and, therefore, was insufficient to warrant review of the prior decision.

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.² 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.³

ANALYSIS

The only decision before the Board in this appeal is that dated May 29, 2002, in which the Office denied appellant's application for merit review. As more than one year had elapsed between the date of the Office's most recent merit decision dated February 27, 2002 and the filing of appellant's appeal postmarked February 28, 2003, the Board lacks jurisdiction to review the merits of appellant's claim.⁴ In her letter requesting reconsideration, appellant asserted that more medical evidence had been submitted by her physicians and stated that she never said that she felt she had nothing to lose by trying to get her injuries covered under workers' compensation. However, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. 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). In addition, while appellant's request for reconsideration noted that new evidence supporting her claim had been submitted to the Office by her physicians, no new medical evidence was received by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that, with respect to the Office's May 29, 2002 decision denying reconsideration, the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member