

FACTUAL HISTORY

On July 3, 1978 the employee, a 33-year-old forestry technician, filed a traumatic injury claim alleging that he contracted Rocky Mountain spotted fever when he was bit by a tick on June 27, 1978.¹ The employee stopped work on June 28, 1978 and returned on July 12, 1978. The Office accepted the claim for Rocky Mountain spotted fever.

On February 23, 2000 the employee filed a claim for a recurrence of disability beginning February 15, 2000, which he attributed to the June 27, 1978 employment injury. Specifically, he alleged that the tick bite caused his seizures and Lyme disease.

By decision dated November 13, 2000, the Office denied the employee's claim for a recurrence of disability.

In a letter dated December 12, 2000, the employee, through counsel, requested a review of the written record with regard to the November 13, 2000 decision denying his recurrence claim and denying acceptance of Lyme disease as a condition due to the June 27, 1978 employment injury.

By decision dated July 16, 2001, an Office hearing representative set aside the November 13, 2000 decision and remanded the case for additional medical development on the causal relationship between the employee's condition of Lyme disease and his accepted June 27, 1978 employment injury.

By decision dated January 28, 2002, the Office denied that the employee had Lyme disease and a resulting seizure disorder due to the accepted June 27, 1978 tick bite.

The record reveals that the employee died on August 9, 2002. The cause of death was listed as coronary thrombosis resulting from a hypercoagulate state due to Lyme disease.

In a letter dated November 8, 2002, appellant requested reconsideration of the denial of the January 28, 2002 decision denying the employee's claim that his Lyme disease and seizure disorder were due to the June 27, 1978 employment injury. Appellant submitted medical and factual evidence in support of her claim. Appellant also filed a survivor's claim.²

By merit decision dated January 28, 2003, the Office denied appellant's request to expand the claim to include Lyme disease. The Office also found the evidence insufficient to establish that the employee's death was causally related to the accepted June 27, 1978 employment injury.

¹ This was assigned file number 11-0027721.

² The Board notes the form referred to by appellant's counsel is not in the record although the Office referenced the form in its January 28, 203 decision. The Office noted appellant's survivor's claim had been assigned file number 11-2012656 and that it been consolidated with claimant's claim with file number 11-0027721 as the master file.

In a letter dated January 14, 2004, appellant, through her representative, requested reconsideration of the January 28, 2003 decision. In support of her request, appellant submitted a November 25, 2003 report by Dr. Charles L. Crist, a treating Board-certified family practitioner, and an April 10, 2003 report by Dr. John S. Fried, a treating Board-certified internist with a subspecialty certification in infectious diseases.

By merit decision dated February 19, 2004, the Office denied appellant's claim that the employee contracted Lyme disease as a result of the accepted tick bite. The Office also denied appellant's claim for survivor's benefits finding that the employee's death was not causally related to his employment.

Appellant, through counsel, requested reconsideration on February 18, 2005. Appellant noted that she was enclosing a copy of a February 18, 2005 report by Dr. Crist in support of her claim.

By decision dated March 3, 2005, the Office denied appellant's request for reconsideration. The Office noted that the record did not contain a copy of Dr. Crist's report referenced by appellant's counsel.³

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.⁵

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.⁶ 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.⁷ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the

³ The Board notes that, subsequent to the Office's March 3, 2005 nonmerit decision, it received Dr. Crist's February 18, 2005 report. The Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁵ *Jeffrey M. Sagrecy*, 55 ECAB ____ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

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.⁸

ANALYSIS

In the present case, appellant presented insufficient evidence to establish that the Office erroneously applied or interpreted a point of law, nor did she advance a relevant legal argument not previously considered by the Office, as she again contended that the Lyme disease causing the employee's death was causally related to the June 27, 1978 tick bite.

Appellant did not submit any evidence with her request for reconsideration. While her counsel stated that a February 18, 2005 report by Dr. Crist was submitted in support of her request, the report was not submitted with the reconsideration request. The Office, in its March 3, 2005 decision, noted no February 18, 2005 report had been submitted with her request. Thus, she failed to submit relevant or pertinent new evidence not previously considered. As appellant failed to meet any of the three requirements for reopening her claims for merit review, the Board finds that the Office properly denied her reconsideration request on March 3, 2005.⁹

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review.

⁸ *Annette Louise*, 54 ECAB ___ (Docket No. 03-335, issued August 26, 2003).

⁹ 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2005 is affirmed.

Issued: August 11, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board