



## ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On May 22, 2002 appellant, then a 51-year-old bus driver, filed an occupational disease claim alleging that he sustained a high frequency hearing loss, Meniere's disease,<sup>3</sup> labyrinthitis and stomach problems on March 2, 1967 due to exposure to lacquer fumes at work. He resigned from his job effective August 27, 1968.

By decision dated August 1, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury, *i.e.*, that he experienced an injury at the time, place and in the manner alleged.

By letter dated October 8, 2002, appellant requested a hearing.

By decision dated January 9, 2003, the Office denied appellant's request for a hearing on the grounds that it was untimely and the issue could be addressed equally well through a request for reconsideration and the submission of additional evidence.

By decisions dated April 29 and October 9, 2003, the Office denied appellant's claim but modified its August 1, 2002 decision to reflect that the medical evidence was not sufficient to establish that his medical conditions were causally related to factors of his employment.

In an undated letter received by the Office on December 8, 2003, appellant requested reconsideration.

In a report dated November 12, 2003, Dr. Neal L. Rogers, a Board-certified otolaryngologist, stated that appellant had indicated that he was exposed to lacquer fumes at work in March 1967 while in a confined space. Dr. Rogers stated:

“After listening to [appellant's] story and treating his dizziness over a period of more than 20 years I feel there is a high likelihood of more than 50 percent that this was one of the initial causes of the toxicities that [appellant] has been experiencing with chronic dizziness and headaches and chronic respiratory problems over the years.”

By decision dated March 4, 2004, the Office denied appellant's request for reconsideration on the grounds that he did not submit evidence warranting further merit review.<sup>4</sup>

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<sup>3</sup> The record reflects that appellant filed a previous claim for Meniere's disease that was denied in an Office decision dated December 3, 1986.

<sup>4</sup> Appellant submitted additional evidence subsequent to the Office decision of March 4, 2004. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

## LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts on review, may end, decrease or increase the compensation previously awarded; or award compensation previously refused or discontinued.<sup>5</sup>

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>7</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.<sup>8</sup>

## ANALYSIS

In support of his request for reconsideration, appellant submitted a report dated November 12, 2003 in which Dr. Rogers obtained a history that in March 1967 appellant was exposed to lacquer fumes at work while in a confined space. He stated:

“After listening to [appellant’s] story and treating his dizziness over a period of more than 20 years I feel there is a high likelihood of more than 50 percent that this was one of the initial causes of the toxicities that [appellant] has been experiencing with chronic dizziness and headaches and chronic respiratory problems over the years.”

Dr. Rogers opined that appellant’s exposure to lacquer in March 1967 was probably one cause of his chronic dizziness, headaches and respiratory problems. This report from Dr. Rogers does not address the issue of whether appellant’s claimed conditions, hearing loss, labyrinthitis and stomach problems, were causally related to his exposure to lacquer fumes at work in March 1967, excessive noise exposure or any other factors of his employment. Therefore, it does not constitute relevant and pertinent evidence not previously considered by the Office.

## CONCLUSION

As 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

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> 20 C.F.R. § 10.608(b).

submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 4, 2004 is affirmed.

Issued: May 23, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member