

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board affirmed the Office's December 31, 2003 and April 1, 2004 decisions denying appellant's occupational injury claim and May 13, 2004 decision denying her request for a review of the written record.² The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference. During the pendency of the prior appeal before the Board, the Office issued a merit decision dated August 16, 2004 denying modification of its April 1, 2004 decision.³

By appeal request form dated November 30, 2004, appellant requested reconsideration. Appellant did not submit any evidence or argument in support of her request.

By decision dated December 9, 2004, the Office denied appellant's request for reconsideration, finding that the information submitted was insufficient to warrant a merit review.⁴

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 may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁵

The application for reconsideration must set forth 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 meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.⁷ Where

² *Beverly Pearson*, Docket No. 04-1861 (issued November 9, 2004).

³ *See* note 1.

⁴ The Board notes that appellant submitted additional evidence after the Office rendered its December 9, 2004 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, the newly submitted evidence cannot be considered by the Board.

⁵ 20 C.F.R. § 10.605.

⁶ 20 C.F.R. § 10.606.

⁷ *Donna L. Shahin*, 55 ECAB ____ (Docket No. 02-1597, issued December 23, 2003).

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.⁸

ANALYSIS

The Office refused to reopen appellant's case for further consideration on the merits of her claim on the grounds that the evidence appellant had submitted was insufficient to warrant a merit review. In fact, appellant submitted no additional evidence or argument subsequent to the last merit decision in this case, which was issued by the Board on November 9, 2004.⁹

The Board finds that, although timely filed, appellant's January 21, 2004 application for reconsideration did not set forth arguments or contain evidence that either: (1) showed that the Office erroneously applied or interpreted a specific point of law; (2) advanced a relevant legal argument not previously considered by the Office; or (3) constituted relevant and pertinent new evidence not previously considered by the Office.¹⁰ Therefore, because appellant failed to meet at least one of these standards, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.¹¹

CONCLUSION

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.608.

⁹ *See supra* note 2.

¹⁰ 20 C.F.R. § 10.606.

¹¹ 20 C.F.R. § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board