

By letter dated May 28, 2004, the Office requested additional information from appellant noting that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. The Office further notified appellant that her claim was being adjudicated as an occupational disease claim. In a letter of the same date, the Office requested additional information from the employing establishment regarding appellant's claim and a description of her employment duties.

By decision dated June 28, 2004, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that appellant sustained an occupational disease in the performance of duty. The Office noted that the evidence of record supported that she performed repetitive duties; however, the medical evidence was not sufficient to establish that her condition was caused by the factors of employment.

In a letter dated June 26, 2004 and received on July 2, 2004, appellant indicated that she had worked as a program technician at the employing establishment since 1982 and was the only permanent full-time employee in her office. Her duties included typing on a computer, using a calculator, filing and writing. Appellant indicated that her activities outside her federal employment included walking, jogging, yard work and one hour of computer work a month. She advised that her condition began on August 1, 2001 and her symptoms affected both hands and increased with repetitive activity. Appellant indicated that in 1981 she underwent surgery on her left hand for an unrelated infection but had never been diagnosed with any other conditions.

By a letter dated May 17, 2005, appellant requested reconsideration. Appellant advised that she sought treatment from a physician and would submit medical information after her follow-up appointment on June 28, 2005. She indicated that she delayed submitting the supporting medical information but requested that the documentation be considered when submitted.

By a decision dated June 30, 2005, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,² which provides that a claimant may obtain review of the merits of his or her written

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b).

application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office.]”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

Appellant’s May 17, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant did not submit any additional evidence with her reconsideration request only a narrative statement, which advised that she sought treatment from a physician and would submit additional medical information. She also submitted a letter dated June 26, 2004, which indicated that she had worked as a program technician at the employing establishment since 1982 and her duties included typing on a computer, using a calculator, filing and writing. However, this is insufficient to show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered. The Board notes that the factual aspects of appellant’s claim noted in appellant’s letters are not in dispute and were not the basis of the Office’s prior denial of the claim. The underlying issue is medical in nature.

Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with her reconsideration request. The Office’s June 28, 2004 merit decision denied the claim because there was no medical evidence supporting that employment factors caused her claimed condition. As noted, the underlying issue is medical in nature. However, appellant did not submit any new and relevant medical evidence with her reconsideration request.

³ 20 C.F.R. § 10.608(b).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her May 17, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.⁴

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 30, 2005 is affirmed.

Issued: April 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁴ The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal; *see* 20 C.F.R. § 501.2(c).