

noted that the record did not contain appellant's claim form, the hearing transcript, evidence discussed in the July 17, 2002 decision and an April 21, 2003 decision.

On January 17, 2002 appellant, then a 55-year-old retired data processor, filed a Form CA-2, occupational disease claim, alleging that factors of her employment caused back, shoulder and neck conditions. The employing establishment controverted the claim, informing the Office that on October 16, 1994 she had taken early retirement in order to take advantage of an incentive program. The employing establishment also submitted an Office decision dated August 17, 1995 which provided that, while appellant had accepted conditions of lumbar strain, lumbosacral facet joint syndrome and depression, she was not entitled to wage-loss compensation after her voluntary retirement on October 16, 1994.²

By letter dated May 10, 2002, the Office informed appellant of the type evidence needed to support her claim and she submitted additional factual and medical evidence. The employing establishment provided the physical requirements of her job. In a July 17, 2002 decision, the Office denied the claim, finding the medical evidence insufficient to establish that the claimed conditions were caused by employment factors. On August 7, 2002 appellant requested a hearing and submitted additional evidence. At the hearing, held on February 5, 2003, appellant testified regarding her claim. By decision dated April 21, 2003, an Office hearing representative affirmed the July 17, 2002 decision.

On July 4, 2003 appellant requested reconsideration³ and in a decision dated July 16, 2003, the Office denied her reconsideration request. On April 11, 2004 she again requested reconsideration. Appellant stated that a Supreme Court case was supportive to her claim and submitted additional evidence, including personal statements⁴ and treatment notes dated from September 8 to December 17, 2003 from Susan A. O'Hara, Ph.D. Dr. O'Hara noted appellant's physical complaints and her perception that she was mistreated at the employing establishment. She opined that appellant was "stuck in self-pity." In a report dated June 12, 1990, Dr. Thomas Miller, Board-certified in anesthesiology, noted appellant's history of back pain since 1987 and findings on examination. He provided a treatment plan.

In a decision dated April 29, 2004, the Office denied appellant's reconsideration request and she filed an appeal with the Board.⁵ Subsequent to the Board's January 11, 2005 order, the Office reassembled the record and, in a nonmerit decision dated January 12, 2006, denied appellant's reconsideration request. The Office found the evidence submitted cumulative or irrelevant to the merit issue in the case.

² This claim is adjudicated by the Office under file number 060418067 and remains open for medical benefits. The instant claim is adjudicated under file number 062057668.

³ Appellant submitted no additional evidence with this request.

⁴ This included an affidavit for an Equal Employment Opportunity Commission (EEOC) claim that was previously of record.

⁵ Docket No. 04-1833, *supra* note 1.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁶ vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁷ Section 10.608(a) of the Code of Federal Regulations provide that 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 the standards described in section 10.606(b)(2).⁸ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.⁹ Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated January 12, 2006 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated April 21, 2003 and the filing of this appeal with the Board on March 31, 2006, the Board lacks jurisdiction to review the merits of her claim.¹¹

With her April 11, 2004 reconsideration request, appellant argued that a Supreme Court case, which she did not identify and the medical evidence supported entitlement. She 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, she was not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).¹²

With respect to the third requirement under section 10.606(b)(2), while appellant submitted additional evidence, none of the reports contains any opinion regarding the cause of a medical condition, either claimed or otherwise. The underlying issue in this case is whether she has submitted sufficient medical evidence to establish that her back, neck and shoulder

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.608(a).

⁹ 20 C.F.R. § 10.608(b)(1) and (2).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ 20 C.F.R. § 501.3(d)(2).

¹² 20 C.F.R. § 10.606(b)(2).

conditions are causally related to factors of her federal employment. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹³ Thus, the reports submitted with appellant's reconsideration request are not relevant to the issue and insufficient to warrant merit review. As appellant did not submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied her reconsideration request.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2006 be affirmed.

Issued: August 14, 2006
Washington, DC

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

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

¹³ *Jacqueline E. Brown*, 54 ECAB 583 (2003).