United States Department of Labor
Employees' Compensation Appeals Board

JUDY A. KACHANES, Appellant	)	
and	)	**Docket No. 06-76**
	)	**Issued: February 6, 2006**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY INSPECTION SERVICE, Henderson, NE, Employer	)	

Appearances:
Judy A. Kachanes, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 19, 2005, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the July 19, 2005 decision.

ISSUE

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

FACTUAL HISTORY

On March 22, 2004 appellant, then a 44-year-old consumer safety inspector, filed an occupational disease claim alleging that she sustained injuries to her back, lower extremities and left hip due to repetitive lifting, twisting and cutting actions required in her job.

By letter dated April 26, 2004, the Office asked appellant to submit additional evidence in support of her claim, including a rationalized opinion from a physician explaining how her medical conditions were causally related to factors of her employment.

By decision dated May 26, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that her medical conditions were causally related to factors of her employment.

On May 2, 2005 appellant requested reconsideration. She submitted a March 14, 2005 report from a physician's assistant

By decision dated July 19, 2005, the Office denied appellant's request for reconsideration on the grounds that the report from the physician's assistant did not constitute relevant and pertinent medical evidence not previously considered by the Office.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[1] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

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; (3) constituting relevant and pertinent evidence not previously considered by the Office.[2] When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[3]

ANALYSIS

With her request for reconsideration, appellant submitted a report from a physician's assistant. However, a physician's assistant is not a "physician" as defined by section 8102(2) of

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b)(2).

[3] 20 C.F.R. § 10.608(b).

the Act.[4] Therefore, the report from the physician's assistant does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2005 is affirmed.

Issued: February 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[4] 5 U.S.C. § 8101(2); *see also Allen C. Hundley*, 53 ECAB 551 (2002).