

**United States Department of Labor
Employees' Compensation Appeals Board**

YOUNG JA KAHN, Appellant)
and) Docket No. 06-636
DEPARTMENT OF VETERANS AFFAIRS,) Issued: June 7, 2006
VETERANS ADMINISTRATION MEDICAL)
CENTER, Denver, CO, Employer)

)

Appearances:
Young Ja Kahn, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 23, 2006 appellant filed a timely appeal of the January 18, 2006 decision of the Office of Workers' Compensation Programs which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.¹

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

This is the second appeal in the present case. In a December 19, 2005 decision, the Board affirmed the Office's decisions dated February 10 and April 13, 2005. The Board determined that appellant failed to establish that she developed an emotional condition in the

¹ The Board notes that, while there are other Office decisions within a year of appellant's appeal, these decisions were previously adjudicated by the Board in its decision dated December 19, 2005. Docket No. 05-1520 (issued December 19, 2005).

performance of duty.² The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

On January 7, 2006 appellant filed a request for reconsideration. Appellant advised that she was submitting a leave used summary which supported her contention that she worked compensatory time because she was not permitted to work overtime; however, no such document was attached to her request. Appellant submitted a report from Dr. Warren P. Jaeger, a Board-certified family practitioner, dated March 11, 2005, who advised that appellant had a history of situational anxiety and abdominal pain which was related to job stressors and interactions with her supervisor.

By decision dated January 18, 2006, the Office denied appellant's reconsideration request on the grounds that her request 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,³ 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,⁴ which provides that a claimant may obtain review of the merits of his or her written 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.⁵

² Docket No. 05-1520 (issued December 19, 2005).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ 20 C.F.R. § 10.608(b).

ANALYSIS

Appellant's January 7, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant's reconsideration request indicated that she had new evidence, a leave used summary, which supported her contention that she worked compensatory time because she was not permitted to work overtime. However, at the time of the Office decision on January 18, 2006, the record did not contain a leave used summary and her letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. 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 submitted a report from Dr. Jaeger dated March 11, 2005. However, this report is duplicative of a report previously submitted which was considered by the Office in its decision dated April 13, 2005. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Therefore, this report is insufficient to require the Office to reopen the claim for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.”⁷ Consequently, 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).

CONCLUSION

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

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984). Even if Dr. Jaeger's report were previously not considered, it would not be relevant as the Board's previous decision found that appellant had not established any compensable factors of employment. Thus, until such factors are established, it is not necessary to consider the medical evidence. See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2006 is affirmed.

Issued: June 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board