



1996 and granted a schedule award for 50 percent loss of use of each lung on August 11, 1999.<sup>1</sup> The employee died on September 15, 2004, at the age of 75.

On October 12, 2004 appellant, the employee's widow, filed a claim for compensation by widow, widower, and/or children, Form CA-5, alleging that the employee's death was caused by the accepted condition of pneumoconiosis. The attached attending physician's report, completed by Dr. Glenn T. Etzel,<sup>2</sup> indicated that he had treated the employee for pneumoconiosis, emphysema and congestive heart failure (right and left). Dr. Etzel stated that appellant's death was caused by cardiopulmonary arrest that was "related to both lung and pulmonary disease and cardiac disease." The basis for finding that the employee's death was causally related to the accepted condition was the fact that people do not die directly from pneumoconiosis, but from heart disease or pneumonia caused or complicated by the disease. The employee's death certificate, certified by Dr. Etzel, listed the causes of death as cardiopulmonary arrest, pneumoconiosis and coronary artery disease.

By letter dated November 2, 2004, the Office requested additional medical information related to appellant's claim, including hospitalization records and diagnostic test results. On November 17, 2004 the Office requested that an Office medical adviser review the records related to the employee's disability and death to determine whether he died of the accepted employment-related condition.

In a report dated November 28, 2004, the Office medical adviser, Dr. Daniel D. Zimmerman, a Board-certified internist, opined that the employee's death "was not due to the accepted condition, pneumoconiosis, by causation, aggravation, acceleration or precipitation." He stated that instantaneous death was not caused by cardiopulmonary arrest, but by cardiac arrhythmia, which occurs when conduction pathways in the heart malfunction. Dr. Zimmerman indicated that this could be the result of several mechanisms within the heart itself that were not caused by or related to pneumoconiosis. He opined that the coronary artery disease for which the employee received an angioplasty in 2003 was the more likely medical explanation for his death. Dr. Zimmerman noted that a May 21, 2002 report from Dr. Jean-Maurice Poitras, a Board-certified internist, indicated that most of the employee's respiratory failure was due to chronic obstructive pulmonary disease (COPD).<sup>3</sup> Based on the information in Dr. Etzel's report of the death, Dr. Zimmerman did not believe that the employee's cardiac death was caused by end-stage COPD.

By decision dated January 26, 2005, the Office denied appellant's claim for death benefits on the grounds that the evidence of record did not establish that the employee's death was caused by his accepted employment-related conditions. The Office found that Dr. Etzel did not provide a well-reasoned medical opinion explaining his finding of a causal relationship. It

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<sup>1</sup> The Board notes that, in addition to pneumoconiosis, the Office accepted the conditions of emphysematous and obstructive lung disease.

<sup>2</sup> Specialty and Board-certification status could not be verified.

<sup>3</sup> The Board notes that it does not appear from the record whether this condition was accepted by the Office.

gave the weight of the medical evidence to the report of Dr. Zimmerman, who opined that the employee's coronary artery disease was the cause of his death.

On March 29, 2005 appellant requested reconsideration of the Office's denial of her claim. She challenged the accuracy of some of Dr. Etzel's patient progress notes and attached a large amount of medical evidence, some of which had not previously been considered by Dr. Zimmerman. Appellant challenged the statement that the employee had died instantaneously, noting that the medical records showed that his lung function deteriorated continually from 1995. She also provided the signed statement of Dr. Suresh Khilnani, a Board-certified internist, who reviewed the employee's medical records. Dr. Khilnani stated that the employee's severe and prolonged hypoxemia and documented *cor pulmonale* (an acute strain or hypertrophy of the right ventricle caused by a disorder of the lungs) caused his heart to fail because his lungs could not properly oxygenate it.

On April 22, 2005 the Office again forwarded the employee's record to Dr. Zimmerman for review. In a report dated May 18, 2005, Dr. Zimmerman indicated that he reviewed the new medical records and found that they related primarily to the employee's June 2003 coronary angiographic procedure. These records showed that the employee had advanced coronary artery disease and, following the procedure in 2003, he appeared to have angina. Dr. Zimmerman reiterated his opinion that the employee most likely died from ventricular arrhythmia, which was caused by ischemic heart disease, not by the accepted condition of pneumoconiosis.

By decision dated June 2, 2005, the Office denied modification of its January 26, 2005 decision. The Office found that the medical evidence did not contain a well-rationalized opinion that supported appellant's claim. It again gave the weight of the medical evidence to Dr. Zimmerman, who found that the accepted condition was not the cause of the employee's death.

On May 7, 2006 appellant requested reconsideration of the Office's June 2, 2005 denial of her claim. In an attached letter, appellant indicated that the employee's records contained all the necessary medical information.

By decision dated July 12, 2006, the Office denied reconsideration on the grounds that no new medical evidence addressing the causation of the employee's death had been submitted.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.<sup>4</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.<sup>5</sup> Section 10.608(b) provides that, when

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant met none of the regulatory requirements for a review of the merits of the Office's June 2, 2005 decision. Appellant's May 7, 2006 request for reconsideration did not allege that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by the Office. Appellant is thus not entitled to further review on the merits of her case under the first two criteria of section 10.606(b)(2).<sup>7</sup> Although appellant stated that the medical evidence in the file was the basis for reconsideration, she did not submit any new evidence with her May 7, 2006 request. The evidence of record had previously been considered by the Office. As there was no relevant and pertinent new evidence for the Office to consider, appellant was not entitled to review under the third criteria of section 10.606(b)(2).<sup>8</sup>

Because appellant did not meet any of the requirements for a review of the merits of her claim, the Office properly denied the May 7, 2006 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

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<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 12, 2006 is affirmed.

Issued: February 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board