

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

M.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, DOMICILIARY, White City, OR,)
Employer)

_____)

**Docket No. 07-443
Issued: June 21, 2007**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2006 appellant filed a timely appeal from the June 22, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of her request. The Board has no jurisdiction to review the Office's April 15, 2005 decision to terminate her compensation benefits, as she did not file her appeal to the Board within one year of that decision.

ISSUE

The issue is whether the Office properly denied appellant's April 8, 2006 request for reconsideration.

FACTUAL HISTORY

On June 23, 1997 appellant, then a 53-year-old interior designer, filed a claim alleging that her epicondylitis was a result of her federal employment: “The unpacking of the pictures for a reconstruction project caused the injury. All lifting, holding and reaching caused continued inflammation to the injured area. Therefore the pain has never entirely gone away since the very beginning.” Appellant stated that she first became aware of the disease or illness on June 29, 1995.¹ The Office accepted her claim for bilateral epicondylitis and approved a lateral release and a left lateral epicondylectomy.

Dr. John Ballard, an orthopedic surgeon selected to resolve a conflict in medical opinion, examined appellant on December 2, 2004. He related the history of injury appellant provided, described her current complaints and reported his findings on physical examination. Dr. Ballard reviewed her medical records and responded to the Office’s questions. He explained that appellant’s work played no role in her total disability beginning June 27, 2003. Dr. Ballard explained that her work injuries resolved years ago, that it was physically and objectively impossible for a left tennis elbow release to cause or contribute in any way to lymphedema and that appellant was capable of performing her regular work duties.

In a decision dated April 15, 2005, the Office terminated appellant’s compensation for epicondylitis. The Office found that the weight of the medical evidence rested with the impartial medical specialist and established that the accepted condition had resolved without residual or disability for work.

On May 5, 2005 appellant asked that false information in her file be corrected and stated that she would be submitting additional medical information. She noted that it took an extreme amount of time to go over every piece of paper in her 10-year claim to find incorrect quotes and false information. Appellant took issue with Dr. Ballard’s report, as he examined her without the medical record and the Office’s statement of conflict. She noted that Dr. Ballard devoted 33 lines to explain the evaluation of the Office referral physician and only 6 lines to explain the evaluation of the attending physician. Appellant stated that there was no evidence that a physical capacity evaluation in 2000 was submitted as evidence in her claim. She stated that the statement of accepted facts did not fully disclose the records from her doctors. Appellant contended that the Office did not base its decision on all the evidence of record but on partial records that included false statements. She contended that Dr. Ballard’s report was not well rationalized or based upon a proper factual or medical background. Appellant stated that the biggest neglect and misrepresentation began in January 1998, when the employing establishment changed her return-to-duty status and forced her to work regular duty. She stated that the information submitted by the employing establishment was false and misleading from the beginning. Appellant submitted a 12-page timeline from June 1995 to January 2005.

On April 8, 2006 appellant wrote to the Office: “I am not sure if I need to apply for reconsideration or not as the information missing and incorrect in my file has been brought to your attention and I have asked that it all be corrected.” She added: “I do not understand how

¹ Appellant also filed a claim for a traumatic right elbow injury on June 29, 1995: “Stuck my arm into a large crate of pictures and lifted a picture and hyperextended my elbow.”

you are able to address my case without the full benefit of the entire files from my long-standing case. I also do not understand how you are able to turn down my case when the information included in the files is false and misleading.” On April 14, 2006 appellant faxed over 90 pages of documents to the Office, documents bearing her corrections and comments. On May 5, 2006 the Office advised her by telephone that, if she believed the Office based its decision on incorrect information, she should consult her appeal rights.

On May 6, 2006 appellant formally requested reconsideration. She noted that she had faxed a large amount of information to the Office on April 14, 2006 to demonstrate the incorrect information in her file. Appellant noted that the Office had advised second opinion doctors that the only information they were to use in reference to her claim was the statement of accepted facts, which allegedly did not include pertinent information from her attending physicians. She noted a March 30, 2000 request for her surgeon to order a physical capacity evaluation and to supply objective findings regarding permanent work restrictions once completed. Appellant also noted that her return-to-work duties were not adhered to. She stated that she was including a letter from her physician in support of her disability retirement from the Federal Government. “Given all this information,” appellant stated, “I believe the claim denial should be overturned and my claim become active again with proper findings and medical and factual assistance be given as is due my case.” She added that she was quite ill and able to work for about an hour. Appellant stated that her arms and shoulders continued to be extremely painful.

The Office also received a number of medical treatment documents, mostly from 2003 and 2004. Among them, reports from Dr. Thomas J. Purtzer, her attending physician, who diagnosed, among other things, chronic pain secondary to lymphedema and epicondylitis.

In a decision dated June 22, 2006, the Office denied appellant’s request for reconsideration. The Office found that she submitted cumulative evidence and that the alleged errors she identified were irrelevant and had no bearing on the issue at hand.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”²

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

² 20 C.F.R. § 10.605 (1999).

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

Appellant did not file a formal request for reconsideration until May 6, 2006, more than a year after the Office's April 15, 2005 decision terminating her compensation benefits. However, the Office treated her April 8, 2006 correspondence as a request for reconsideration. This made appellant's request timely. Therefore, to require the Office to reopen her case, her request must meet at least one of the three standards noted above.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Most of appellant's arguments, including her return-to-work duties, are wholly irrelevant to the April 15, 2005 termination of benefits. She did argue that the report of Dr. Ballard, the impartial medical specialist, was not well rationalized or based upon a proper factual or medical background. However, the Office previously considered appellant's contentions when it found that Dr. Ballard's report constituted the weight of the medical evidence. Appellant may have her own opinion on the evidentiary weight of this report, but the Office previously considered the matter. Further, she did not submit relevant and pertinent new evidence not previously considered by the Office. Appellant submitted no new medical evidence in support of her contention of ongoing epicondylitis related to her federal employment. Instead, she submitted a multitude of documents that she marked with corrections and comments. The Board has reviewed all of this material and finds that it does not constitute relevant and pertinent new evidence not previously considered by the Office.

The underlying issue is whether appellant continues to suffer from the accepted epicondylitis. There is nothing new in her request for reconsideration relevant to this issue. The Board will therefore affirm the Office's June 22, 2006 decision denying appellant's request.

CONCLUSION

As appellant's request for reconsideration failed to meet at least one of the three standards for obtaining a merit review of her case, the Board finds that the Office properly denied her request. She is not entitled to a reopening of her case.

³ *Id.* at § 10.606.

⁴ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 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