

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

P.W., Appellant

and

**DEPARTMENT OF THE ARMY, TANK
AUTOMOTIVE & ARMAMENT COMMAND,
Warren, MI, Employer**

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**Docket No. 07-1170
Issued: October 10, 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 April 9, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated March 1, 2007 denying his request for reconsideration. As the last merit decision in this case was issued on February 7, 2006 over one year prior to this appeal the Board does not have jurisdiction over the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 2, 2003 appellant, then a 55-year-old mechanical engineer, filed an occupational disease claim alleging that she sustained neuron sarcoidosis and skin sarcoidosis as a result of the conditions in the building where she worked.

By decision dated July 24, 2003, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the exposures occurred as alleged that the medical evidence was insufficient to relate the cause of her medical conditions to her federal employment.

On August 11, 2003 appellant requested an oral hearing which was held on February 26, 2004. At the hearing, she testified that, while working for the employing establishment at a different post in the winter of 1995, she was exposed to chemical compounds of ammunition and target testing which included aluminum, carbide, titanium, beryllium, depleted uranium, tungsten, organic volatile compounds. Appellant noted that her second exposure occurred when she was working in a classified building for the employing establishment from August 1999 until April 2000. She noted that the environment of the building made her sick, noting that she was exposed to dust from special classified projects which involved grinding, cutting and welding. Appellant indicated that aluminum, titanium and tungsten were all in the atmosphere. She noted that she stopped working in January 2003 after trying to work part-time and working from home.

In a decision dated May 18, 2004, the hearing representative found that appellant's testimony at the hearing, coupled with the medical record, was sufficient to establish the claimed occupational exposure. The claim was denied as the medical evidence did not establish causal relationship.

On May 10, 2005 appellant requested reconsideration and submitted additional evidence in support of her claim. By decision dated February 7, 2006, the Office denied modification of the May 18, 2004 decision finding that the medical evidence was insufficient to establish the causal relationship between appellant's claimed work exposure and her diagnosed conditions.

On February 1, 2007 appellant requested reconsideration. In a letter dated January 29, 2007, she asked for a one-year extension within which to submit medical evidence. Appellant indicated that it was difficult to get timely appointments with doctors who have expertise to evaluate what effect appellant's work environment had on her sarcoidosis. In a February 20, 2006 medical report, Dr. Haranath Policheria, an attending Board-certified neurologist, listed appellant's diagnosis as neurosarcoidosis. He noted that she experienced headaches and anxiety.

In a March 21, 2006 report, addressed to Dr. Policheria, Dr. Fernando Martinez, a pulmonologist, noted that appellant had sarcoidosis. He noted that she continued to believe that this was related to her employment when she was exposed to armor and hard metals as well as toxic fumes. Dr. Martinez indicated that the nature of the causal relationship between these exposures and sarcoidosis remained controversial. He noted that appellant wished to be evaluated by Dr. Lee Newman, a pulmonologist, and that he thought this would be an opportunity for her to obtain a definitive opinion.

In reports dated September 11 to December 7, 2006, Dr. Policheria listed appellant's diagnosis as neurosarcoidosis. He also noted that she suffered from headaches, hypersomnolence, anxiety and dizziness.

In a January 18, 2007 report, Dr. Leia F. Meyers, a family practitioner, indicated that appellant was currently a patient of hers and that, as of May 2006, she had been treated for Diabetes Mellitus Type II with nephropathy, neurosarcoidosis, hypertension, elevated cholesterol, allergic rhinitis, osteoporosis and depression. She further noted that appellant experienced episodes of dizziness.

In a January 31, 2007 report, a clinical psychologist diagnosed major depression, recurrent and indicated that appellant could benefit for ongoing psychotherapy.

Appellant submitted the results of lab tests taken on March 23, May 23 and 30, August, 3 23 and 31, September 2 and 28 and October 6 and 31, 2006. She also submitted charts from neurological studies conducted on May 30, 2006 and results from an electroneurography conducted on September 27, 2006. Appellant submitted the results of a bone mass measurement conducted on January 25, 2006 and x-rays taken on January 25 and October 31, 2006 which found no evidence of active intrathoracic disease.

In a decision dated March 1, 2007, the Office denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulation provide that the application for reconsideration, including all supporting documents, 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 considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹

ANALYSIS

Appellant's request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to 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, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted numerous documents. However, the Board finds that these documents are not relevant because they do not specifically address the issue of whether appellant sustained a medical condition causally related to the accepted factors of her federal employment, *i.e.*, exposure to various chemicals and dust particles, as alleged.

The lab tests, neurological studies, bone mass measurements and x-rays do not address the underlying issue of causal relationship. The clinical psychologist's report addresses

¹ 20 C.F.R. § 10.606(b)(2)(iii).

appellant's emotional condition, but not her claimed physical condition. Dr. Policheria repeated his earlier diagnosis of neurosarcoidosis and noted that appellant suffered from headaches, hypersomnolence, anxiety and dizziness. However, Dr. Policheria never addressed the reason that appellant's claim was denied, *i.e.*, he did not explain any causal relationship between her workplace exposure to various elements and her neurosarcoidosis. Dr. Martinez noted that appellant believed that her sarcoidosis was related to exposure to armor and hard metals as well as toxic fumes during her federal employment, but he indicated that the nature of the relationship between these exposures and sarcoidosis remained controversial. Therefore, this opinion does not constitute medical evidence of causal relationship. Dr. Meyers noted that appellant had been treated for diabetes with nephropathy, neurosarcoidosis, headaches, hypersomnolence, anxiety and dizziness. However, she never indicated that these conditions were caused by appellant's employment. The evidence submitted by appellant on reconsideration is not relevant to the issue in this case.

Accordingly, the Board finds that the Office properly determined that 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) and properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 1, 2007 is affirmed.

Issued: October 10, 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