

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

N.E., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
Boston, MA, Employer)

Docket No. 07-1173
Issued: September 14, 2007

Appearances:
Appellant, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 27, 2007 appellant filed a timely appeal of the January 2, 2007 decision of the Office of Workers' Compensation Programs which denied merit review. Because more than one year has elapsed between the most recent merit decision dated January 11, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

On June 27, 2005 appellant, then a 43-year-old manager, filed an occupational disease claim alleging that mercury was spilled in her office on that date which aggravated her asthma and allergies. She became aware of her condition on June 27, 2005. Appellant stopped work on

June 27, 2005 at 10:15 a.m. and returned at 1:15 p.m. the same day. She submitted laboratory results and an electrocardiograph dated June 27 and July 20, 2005.

By letter dated August 2, 2005, the Office requested additional information from appellant noting that the evidence submitted was insufficient to establish her claim. The Office specifically requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. In a letter of the same date, the Office requested that the employing establishment address appellant's allegations, provide a description of her employment duties and identify precautions taken to minimize the effects of the workplace exposure.

Appellant submitted a note from Dr. William Binder, Board-certified in emergency medicine, who treated appellant on June 27, 2005 for mercury inhalation. Dr. Binder diagnosed mercury exposure (elemental) and recommended that appellant follow-up with her primary care physician. Appellant also submitted a report from Dr. Anne M. Althausen, a Board-certified gynecologist, dated July 20, 2005. Dr. Althausen treated appellant for anemia, endometriosis, migraine headaches and asthma. She noted that appellant underwent a hysteroscopy to resect the uterine septum and laparoscopy for fulguration of endometriosis.

By decision dated January 11, 2006, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that she sustained an occupational disease in the performance of duty. The Office noted that the evidence of record supported that the claimed events occurred; however, the medical evidence was not sufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.¹

In a letter dated November 3, 2006, appellant requested reconsideration. She advised that on June 27, 2005 mercury spilled in her office and she was advised by her physician to report to the emergency room because she had preexisting asthma. Appellant indicated that she was treated by an emergency room physician for mercury inhalation observation, tests and treatment. She advised that on July 20, 2005 she was seen for a preoperative surgical appointment for an unrelated condition and the hospital incorrectly sent her surgery information to the Office instead of the emergency room reports documenting her treatment for mercury inhalation. Appellant indicated that she received no further treatment for mercury inhalation. She submitted a duplicate discharge summary from Dr. Binder dated June 27, 2005 and electrocardiography report dated June 27, 2005.

By decision dated January 2, 2007, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

¹ 5 U.S.C. §§ 8101-8193.

LEGAL PRECEDENT

Under section 8128(a) of the Act,² 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,³ 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.⁴

ANALYSIS

Appellant’s November 3, 2006 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.

Appellant submitted a narrative statement which advised that on June 27, 2005 mercury spilled in her office and she was treated in the emergency room for mercury inhalation. She indicated that she received no further treatment for mercury exposure. Appellant advised that, on July 20, 2005, she was treated for a preoperative surgery appointment for an unrelated condition and the hospital incorrectly sent her surgery information to the Office instead of the emergency room records for mercury inhalation. However, this is insufficient to show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered. The Board notes that the factual aspects of appellant’s claim are not in dispute and was not the basis of the Office’s prior denial of the claim. Therefore, the Board finds that the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. 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).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ 20 C.F.R. § 10.608(b).

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant, submitted a discharge summary from Dr. Binder dated June 27, 2005 and an electrocardiography report dated June 27, 2005. However, these reports are duplicative of evidence previously submitted and considered by the Office in its decision dated January 11, 2006. 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.⁵ Therefore, these reports are insufficient to require the Office to reopen the claim for a merit review. The Office's January 11, 2006 merit decision denied the claim because there was no medical evidence supporting that employment factors caused her claimed condition. Thus, the underlying issue is medical in nature. But, as noted above, appellant did not submit any new and relevant medical evidence with her reconsideration request.

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.”⁶ 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.⁷

⁵ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ 20 C.F.R. § 10.606(b).

⁷ The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal; see 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 2, 2007 is affirmed.

Issued: September 14, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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