

been accepted for lumbago and right shoulder sprain (02-0732578). She explained that she had difficulty sitting and standing for long periods. Appellant also experienced back spasms, tingling in her feet and a burning sensation in her hip area.

On May 12, 1998 appellant accepted a limited-duty assignment as a modified general expeditor. Her duties consisted of manually sorting letter-sized pieces of mail weighing less than two pounds each. Appellant performed this work seated at a modified, desk-type case while using a straight-back chair. The limited-duty assignment was consistent with the work restrictions imposed by her treating physician, Dr. Anthony J. Spataro, a Board-certified orthopedic surgeon.

On September 28, 1998 Dr. Spataro reiterated that appellant was able to perform light-duty work. He imposed a lifting restriction of 0 to 10 pounds, and a similar weight limitation with respect to pushing and pulling. No other physical limitations were identified at that time.

In a report dated October 2, 1998, Dr. Harold K. Sirota, a family practitioner, diagnosed sciatica and low back syndrome. He also indicated a need to rule out the possibility of herniated disc, disc bulge and spinal abnormality. Additionally, Dr. Sirota reported that appellant's light-duty assignment had been terminated in late June 1998. While appellant was eager to return to light-duty work, apparently no such work was available. Dr. Sirota further noted that appellant could perform sedentary work without any lifting.

On November 9, 1998 appellant accepted a limited-duty assignment that required her to manually sort letter-sized pieces of mail, much like her prior assignment. The position description indicated that her assigned duties would be in accordance with her medical restrictions, which included sedentary duty and no lifting, pushing or pulling over 10 pounds.

Rather than treat appellant's claim as a recurrence of her August 22, 1997 employment injury, the Office determined that the October 15, 1998 filing should instead be developed as a new occupational disease claim with an October 2, 1998 date of injury (02-2508616). The decision to reclassify appellant's claim as an occupational disease claim was based in part on Dr. Sirota's notation that appellant had "pain sitting and standing from injuring herself on [October 2, 1998]." Dr. Sirota further stated that appellant's work was "continually [aggravating] her lower back condition and sciatica."

On October 25, 2005 the Office wrote to appellant requesting additional factual and medical information. It advised appellant that it needed "the history of the [October 2, 1998] injury." The Office further noted that, while appellant previously filed several other claims, their primary concern was "what occurred on [October 2, 1998] only."² Appellant responded by letter dated November 13, 2005, however, she did not provide the requested information. Instead, appellant referred the Office to two other claim files that purportedly included the "relevant factors concerning the [October 2, 1998] incident."

In a decision dated December 29, 2005, the Office denied appellant's claim. By decision dated August 2, 2006, the Office clarified that appellant's claim was adjudicated as a new

² Between 1997 and 2002 appellant filed at least nine separate workers' compensation claims.

occupational disease claim, rather than a recurrence of her August 22, 1997 injury. The Office denied appellant's October 2, 1998 occupational disease claim because she failed to establish fact of injury.

On July 8, 2007 appellant requested reconsideration. The request was accompanied by a March 1998 report from Dr. Sirota and a May 4, 1998 letter from the Office asking Dr. Sirota to submit a comprehensive medical report. Appellant also submitted a copy of a November 13, 2003 letter from the employing establishment inquiring about the status of two of appellant's recurrence claims. The Office also received a January 2, 2004 medical report from Dr. Spataro and an October 12, 2006 report from Dr. Ernesto S. Capulong.

In a decision dated July 26, 2007, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

The Office has the discretion to reopen a case for review on the merits.³ 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.⁴ Section 10.608(b) provides that, when 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.⁵

ANALYSIS

Appellant's July 8, 2007 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 a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁶

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence with her July 8, 2007 request for reconsideration. Appellant's claim was denied because she failed to provide sufficient factual information regarding the circumstances that allegedly gave rise to her claimed injury of October 2, 1998. Although she submitted new evidence with her request for reconsideration, Dr. Capulong's October 12, 2006 medical report did not address the relevant issue on

³ 5 U.S.C. § 8128(a) (2000).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

⁶ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

reconsideration, which was fact of injury. The four other documents appellant submitted also did not identify any particular employment activities appellant performed on or about October 2, 1998. Her July 8, 2007 request for reconsideration did not include any additional information that would assist in resolving the question of what particular employment activities may have caused or contributed to her claimed October 2, 1998 injury. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).⁷

Because 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), the Office properly denied the July 8, 2007 request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁷ 20 C.F.R. § 10.606(b)(2)(iii).