

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

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E.G., Appellant )

and )

DEPARTMENT OF THE ARMY, )  
97<sup>th</sup> GENERAL HOSPITAL, )  
Frankfurt, Germany, Employer )

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**Docket No. 09-146  
Issued: August 7, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 October 20, 2008 appellant, through her representative, filed a timely appeal from the September 10, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.

**ISSUE**

The issue is whether the Office properly denied appellant's August 26, 2008 request for reconsideration.

**FACTUAL HISTORY**

On March 20, 1989 appellant, then a 45-year-old registered nurse, sustained an injury in the performance of duty while moving an electric typewriter. The Office accepted her claim for lumbar strain and left radiculopathy, L4-5 herniated nucleus pulposus with surgery on November 6, 1991, a disc excision at L4-5 on November 28, 1994 and major depression.

A conflict in medical opinion arose between appellant's physiatrist, Dr. Eric W. Long, who found that she was physically capable of sedentary work two to four hours a day, three to four days a week, and the Office referral physician, Dr. Stephen J. Thomas, Jr., an orthopedic surgeon, who found that she was able to work eight hours a day with restrictions. Dr. William T. Thieme, a Board-certified orthopedic surgeon and impartial medical specialist, resolved the conflict by finding that appellant was capable of working sedentary duty six hours a day.

In a decision dated October 29, 2007, the Office terminated appellant's entitlement to compensation under 5 U.S.C. § 8106(c)(2). It found that she refused suitable work as a nurse consultant with the U.S. Army Corps of Engineers in the Health and Safety Office in Portland, Oregon. The Office found that the weight of the medical opinion evidence rested with the opinion of Dr. Thieme, the impartial medical specialist.

On December 17, 2007 appellant requested reconsideration. She submitted a February 5, 2008 report from Dr. Long, who noted that he had restricted her from regular and modified work from September 25, 2007 to September 25, 2008. Dr. Long noted appellant's obvious inability to tolerate sedentary work. He described his findings on physical examination and offered his assessment. Dr. Long stated that he would reassess appellant in four weeks.

In a decision dated March 17, 2008, the Office denied appellant's request for reconsideration. It found that Dr. Long's February 5, 2008 report was irrelevant, as he did not address the Office's October 29, 2007 decision or why he believed the position of nurse consultant was not suitable for her at the time of the October 29, 2007 decision.

On August 26, 2008 appellant, through her representative, requested reconsideration based on a May 14, 2008 report from Dr. Long, who noted that he had restricted her from regular or modified work from August 6, 2007 through September 25, 2008. Dr. Long described his findings on physical examination and offered his assessment. He stated: "[Appellant] continues to have major difficulty with bilateral L5 radiculopathy and continues to be disabled from regular or modified work because of her lumbar condition. She needs to continue to pace herself carefully and limit her activity in order to avoid major progression of lumbar spinal nerve root injury." Dr. Long reported her work status as "restricted from regular/modified work September 25, [20]07 [to] September 25, [20]08."

In a decision dated September 10, 2008, the Office denied appellant's request for reconsideration. It found that Dr. Long provided the same opinion in his May 14, 2008 report that he provided on February 5, 2008, which the Office previously considered. As the evidence submitted to support appellant's request for reconsideration was not relevant evidence not previously considered, the Office denied a merit review of her case.

### **LEGAL PRECEDENT**

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>1</sup> The employee shall exercise this right through a request to

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<sup>1</sup> 5 U.S.C. § 8128(a).

the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”<sup>2</sup>

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

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> 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.<sup>5</sup>

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.<sup>6</sup> Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.<sup>7</sup>

### ANALYSIS

To support her August 26, 2008 request for reconsideration, appellant did not attempt to show that the Office erroneously applied or interpreted a specific point of law; nor did she advance a relevant legal argument not previously considered by the Office. Instead, she submitted the May 14, 2008 report from Dr. Long, her psychiatrist. The question presented therefore, is whether this report constitutes relevant and pertinent new evidence not previously considered by the Office.

This report is not considered new evidence not previously considered by the Office. Dr. Long essentially repeated his February 5, 2008 report, which the Office previously considered. Both reports stated that appellant was restricted from regular and modified work from September 25, 2007 to September 25, 2008. In its March 17, 2008 decision, the Office

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<sup>2</sup> 20 C.F.R. § 10.605 (1999).

<sup>3</sup> *Id.* at § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>7</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

found this opinion to be irrelevant, as Dr. Long failed to address the Office's October 29, 2007 decision and did not explain why he believed the position of nurse consultant was not suitable for the claimant at the time of the October 29, 2007 decision terminating her compensation. Dr. Long's May 14, 2008 report did not cure these deficiencies; it offered nothing new and relevant. For this reason, the Board finds that Dr. Long's May 14, 2008 report does not constitute relevant and pertinent new evidence not previously considered by the Office.

Because appellant's August 26, 2008 request for reconsideration does not meet at least one of the three standards for obtaining a merit review, the Board will affirm the Office's September 10, 2008 decision denying that request.

**CONCLUSION**

The Board finds that the Office properly denied appellant's August 26, 2008 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2009  
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