

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

D.H., Appellant)
and) Docket No. 08-2393
DEPARTMENT OF VETERANS AFFAIRS,) Issued: June 16, 2009
VETERANS ADMINISTRATION MEDICAL)
CENTER, Brockton, MA, Employer)

)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2008 appellant filed a timely appeal of the June 11, 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(d), the Board does not have jurisdiction over the merits of appellant's claim.¹

ISSUE

The issue is whether the Office properly denied appellant's March 11, 2008 request for reconsideration under 5 U.S.C. § 8128(a).

¹ The Office issued its most recent merit decision on July 11, 2007, which is more than a year prior to the filing of the instant appeal. As such, the Board does not have jurisdiction over the July 11, 2007 merit decision.

FACTUAL HISTORY

Appellant, a 46-year-old food service worker, has an accepted claim for cervical strain, which arose on August 13, 2003. By decision dated October 13, 2006, the Office terminated her wage-loss compensation and medical benefits effective October 27, 2006. It based its decision on the June 8, 2006 report of Dr. Ronald Birkenfeld, a Board-certified neurosurgeon and Office referral physician, who found that appellant's employment-related cervical strain had resolved. He also indicated that she could resume her regular employment as a food service worker and that there was no need for further medical treatment of her cervical strain. The Branch of Hearings and Review affirmed the termination of benefits in a July 11, 2007 decision.

On March 11, 2008 appellant requested reconsideration. She stated that the constant and severe pain from her neck and shoulders kept her from getting any sleep. Appellant also claimed to have been suffering from mild depression as well as insomnia. She further indicated that because of her pain she was unable to sit still, focus or concentrate. And as a result, appellant was precluded from currently seeking job training or education. Her March 11, 2008 request for reconsideration was unaccompanied by any additional evidence.

By decision dated June 11, 2008, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

The Office has the discretion to reopen a case for review on the merits.² 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.³ 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.⁴

ANALYSIS

Appellant's March 11, 2008 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. Therefore, 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).⁵ She also failed to satisfy the third

² 5 U.S.C. § 8128(a) (2006).

³ 20 C.F.R. § 10.606(b)(2) (2008).

⁴ *Id.* at § 10.608(b).

⁵ *Id.* at § 10.606(b)(2)(i) and (ii).

requirement under section 10.606(b)(2). Appellant did not submit any relevant and pertinent new evidence with her March 11, 2008 request for reconsideration. Consequently, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).⁶

CONCLUSION

The Board finds that the Office properly denied appellant's March 11, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Id.* at § 10.606(b)(2)(iii).