



envelope from Ethiopia which triggered her asthma. She had difficulty breathing, a headache and coughing.

The Office requested additional factual and medical evidence in a letter dated July 5, 2002.

In a report dated July 25, 2002, Dr. Leslie A. Oshita, a physician Board-certified in both internal and preventative medicine, noted appellant's history of injury and symptoms. He stated that appellant attributed the exacerbation of her asthma symptoms due to stress from her claim for cellulitis, possible anthrax exposure, physical exertion from throwing mail and exposure to cold air. Dr. Oshita stated, "It has been my opinion that her asthma has been aggravated by her work environment and/or physical demands of the tasks required by her supervisor."

By decision dated August 8, 2002, the Office denied appellant's claim finding that she had not established that she had been exposed to any chemicals. Appellant requested an oral hearing on August 30, 2002. She submitted a report dated September 17, 2002 from Dr. Oshita opining that it was more probable than not that appellant's condition was caused or aggravated by her work activities and environment. Dr. Oshita stated that the fact that appellant required treatment for her asthma while at work indicated that occupational factors aggravated her condition. In a report dated March 4, 2003, he opined that appellant had sustained a work-related aggravation of her asthma. Dr. Oshita noted that seemingly benign substances such as food starch can be problematic for persons with respiratory illnesses.

Appellant testified at the oral hearing on March 24, 2003. By decision dated July 8, 2003, the hearing representative affirmed the August 8, 2002 decision finding that Dr. Oshita's reports were not sufficient to establish her claim.

Appellant requested reconsideration on July 28, 2004. She asserted that she believed that her exposures to Ethiopian parcels worsened her asthma and led to increased doses of prednisone which resulted in high blood pressure, diabetes and severe osteoarthritis. By decision dated July 23, 2004, the Office reviewed the merits of appellant's claim and denied modification of the prior decisions.

Appellant again requested reconsideration on November 30, 2004. In a report dated November 8, 2004, Dr. Oshita noted that appellant continued to receive treatment for a severe asthma attack that she experienced on April 26, 2000. He stated that appellant had developed complications from prolonged steroid containing medications. Dr. Oshita opined that appellant's asthma had been permanently aggravated by her workplace exposures. On November 18, 2004 Dr. Robert Sachs, a Board-certified allergist, noted that appellant had significant asthma beginning in 1980. He noted that appellant was exposed to a white powder in 2000 and to a strong odor in 2002. Dr. Sachs stated that appellant's systemic steroid requirement had risen and opined, "[I]t is certainly possible that what has happened with [appellant] is not just a natural progression of her preexisting bronchial asthma ... but, rather, an accelerated worsening of the bronchial asthma due to persistent bronchial hyperreactivity and remodeling of her airways...."

By decision dated April 8, 2005, the Office reviewed the merits of appellant's claim and noted that it had accepted that appellant was exposed to an envelope from Ethiopia on January 7,

2002, but the evidence did not establish that the envelope was broken, damaged, leaky or contained chemical fumes. It found that the evidence did not establish that appellant's respiratory condition was causally related to the January 7, 2002 exposure.

Appellant requested reconsideration on March 31, 2006 and advised that she was submitting additional factual evidence in support of her claim. By decision dated May 12, 2006, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

On May 9, 2007 appellant requested reconsideration. In a report dated May 24, 2006, Dr. Thomas Kreck, a Board-certified pulmonologist, diagnosed severe and persistent asthma which was steroid dependent. He stated that appellant was unable to work. Dr. Kreck concluded, "She believes that her prior symptoms of very mild intermittent asthma greatly increased after dust exposure at work." Dr. Maurice Franco, a Board-certified pulmonologist, submitted pulmonary function tests dated April 12, 2006.

By decision dated May 16, 2007, the Office denied modification of its prior decisions finding that appellant failed to submit the necessary medical opinion evidence establishing a causal relationship between her accepted employment exposure and her diagnosed condition.

Appellant requested reconsideration on May 13, 2008 and submitted additional medical evidence. She alleged that her asthma worsened due to exposure to dust from Ethiopian parcels. Since her employment exposures, her physicians prescribed prednisone to treat her asthma which had led to high blood pressure, diabetes, sleep apnea and arthritis. In a January 9, 2008 note, Dr. Kreck stated that appellant's condition had worsened and required additional therapy. Appellant resubmitted Dr. Franco's April 12, 2006 test results. In a note dated January 10, 2008, Dr. R.S. Rajah, a Board-certified pulmonologist, opined that appellant was totally disabled due to chronic obstructive pulmonary disease, arthritis and diabetes.

By decision dated August 19, 2008, the Office denied reopening appellant's claim for reconsideration of the merits, finding the evidence submitted was not relevant to the issue in her claim, a lack of medical opinion evidence establishing a causal relationship between her accepted exposure and her diagnosed condition.<sup>1</sup>

On appeal to the Board, appellant disagreed with the Office's decision and noted that she retired on disability on December 11, 2003. She reiterated that she was prednisone dependant and that this had led to diabetes, hypertension, sleep apnea, enlarged heart, high cholesterol, arthritis, stomach pain and chronic obstructive pulmonary disease.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that the evidence or

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<sup>1</sup> Following the Office's August 19, 2008 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>4</sup>

### ANALYSIS

Appellant requested reconsideration of the Office's May 16, 2007 merit decision on May 13, 2008. She claimed a permanent aggravation of her asthma due to exposure to an envelope from Ethiopia on January 7, 2002. The Office found that the evidence did not establish that the envelope was broken, damaged, leaky or contained chemical fumes. It denied appellant's claim as the medical evidence did not establish a causal relationship between her accepted exposure and her asthma condition.

In support of her request for reconsideration, appellant submitted a brief note dated January 9, 2008 from Dr. Kreck, a Board-certified pulmonologist, who merely stated that appellant's condition had worsened over the prior six months and required additional therapy. Dr. Kreck did not address the underlying issue in the case of causal relationship. The note concerning ongoing treatments is not relevant to the issue before the Office. In a note dated January 10, 2008, Dr. Rajah, a Board-certified pulmonologist, opined that appellant was totally disabled due to chronic obstructive pulmonary disease, arthritis and diabetes. This note also fails to address the issue of causal relationship and is not relevant to the reasons for which the Office denied appellant's claim.

Appellant also resubmitted the April 12, 2006 test results. These test results are not sufficient to require the Office to reopen appellant's claim for consideration of the merits as they were already considered by the Office in reaching the May 16, 2007 merit decision and are therefore repetitious.<sup>5</sup>

Regarding appellant's contentions on appeal, the Board notes that it does not have jurisdiction to address any consequential injury resulting from her treatment with prednisone. As her asthma condition has not been accepted by the Office, it has not adjudicated this issue.<sup>6</sup>

### CONCLUSION

The Board finds that appellant has failed to submit the necessary relevant and pertinent new evidence which would require the Office to reopen her claim for consideration of the merits.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> See *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>6</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 19, 2008 is affirmed.

Issued: September 2, 2009  
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