

FACTUAL HISTORY

The Office accepted appellant's April 12, 1985 traumatic injury claim for acute lumbar strain. Appellant received compensation and medical benefits until approximately February 1986, when the case was officially closed. On October 11, 2007 she submitted a request to reopen her claim for further medical treatment and to expand her claim to include aggravation of lumbar degenerative disc disease at L5-S1.

In a decision dated November 26, 2007, the Office denied appellant's recurrence claim. It found that the medical evidence was insufficient to establish that her current diagnosed condition was causally related to the accepted lumbar strain.

Appellant submitted a November 8, 2008 report from Dr. Leonard J. Cerullo, a Board-certified neurological surgeon. The report consisted primarily of responses, in the form of checkmarks, to questions regarding the relationship of appellant's current condition to her accepted injury. Dr. Cerullo indicated that appellant had pain in the lumbar spine, as well as numbness and tingling in the lower extremities, and that she exhibited a work-related aggravation of a preexisting lumbar degenerative disc condition as a result of impairment to S1. He opined that there was a causal relationship between the accepted lumbar sprain and her current condition, and that her accepted condition should be expanded to include degenerative disc disease at L5-S1.

On November 11, 2008 appellant requested reconsideration of the Office's November 26, 2007 decision. She contended that Dr. Cerullo's November 8, 2008 report established a causal relationship between her current condition and the accepted injury and supported her request to expand her claim to include degenerative disc disease at L5-S1.

By decision dated January 12, 2009, the Office denied appellant's reconsideration request. It found that, because her letter neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant further merit review.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."³

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law;

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.605.

(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.⁴

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.⁵ 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.⁶

ANALYSIS

Appellant submitted a timely request for reconsideration of the Office's November 26, 2007 decision. On January 12, 2009 the Office found that appellant neither raised substantive legal questions nor included new and relevant evidence in support of her request for reconsideration and, therefore, was insufficient to warrant further merit review. The Board finds, however, that the evidence submitted constituted relevant and pertinent new evidence not previously considered.⁷ Therefore, the Office improperly refused to reopen appellant's case for further review of the merits.

Appellant submitted a November 8, 2008 report from Dr. Cerullo who opined that there was a causal relationship between the accepted lumbar sprain and her current condition, and that her accepted condition should be expanded to include degenerative disc disease at L5-S1. The Board finds that Dr. Cerullo's report constitutes pertinent new evidence relevant to the underlying issue in this case, namely, whether the medical evidence submitted establishes a causal relationship between appellant's current medical condition and the accepted employment injury. This new evidence was not previously considered by the Office; therefore, it is sufficient to require further review of the case on its merits.⁸

The Board notes that Dr. Cerullo did not provide a narrative report fully explaining his opinion on causal relationship. To obtain merit review, however, appellant is not required to submit evidence sufficient to establish her claim. She need only provide evidence that is relevant and pertinent, and not previously considered by the Office.⁹ Dr. Cerullo's report meets these requirements. The case will therefore be remanded for consideration of Dr. Cerullo's

⁴ *Id.* at § 10.606.

⁵ *Donna L. Shahin*, 55 ECAB 192 (2003).

⁶ 20 C.F.R. § 10.608.

⁷ *Id.* at § 10.606(b)(2).

⁸ *Id.* See *Donald T. Pippin*, 54 ECAB 631 (2003).

⁹ *Billy B. Scoles*, 57 ECAB 258 (2005).

November 8, 2008 report, together with the previously submitted evidence of record, and a decision on the merits.¹⁰

CONCLUSION

The Board finds that the Office improperly refused to reopen appellant's claim for further review of the merits pursuant to section 8128(a) of the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2009 is set aside, and the case remanded to the Office for proceedings consistent with this decision of the Board.

Issued: February 25, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ On appeal, appellant presented arguments addressing the merits of her claim. As the Board does not have jurisdiction over the merits, those arguments will not be addressed in this decision.