

FACTUAL HISTORY

On September 8, 2008 appellant, a 53-year-old wildlife ecologist, filed an occupational disease claim (Form CA-2) in which she alleges that while on an authorized trip to South Africa and Zambia she was exposed to dengue fever. She notes that when she returned from abroad, she felt “unusually tired.” During a subsequent business trip to Wyoming, appellant alleges her symptoms became “suddenly much worse.” She relates that dengue fever is a mosquito-borne virus commonly found in Africa, particularly in urban centers. Appellant opines that there is no other way she could have contracted the disease. She first became aware of her condition and that it was caused by her federal employment on August 7, 2007.

By decision dated December 3, 2008, the Office denied the claim, finding that, while appellant established the employment factors she considered responsible for her condition, the evidence of record did not demonstrate the established employment factors caused her condition.

On July 16, 2009 appellant requested reconsideration and submitted a note, dated July 17, 2009. She related that two weeks after returning from Africa, on “official USGS travel,” she traveled to Wyoming for a business meeting. While there, appellant developed symptoms for which she sought medical attention at a local emergency room. She reports, however, that, although the treatment she received was “over the top,” the emergency room physician “misdiagnosed” her condition and never determined what was wrong with her. It was only after she returned home and saw another doctor that her medical condition was properly diagnosed. Regardless, the Wyoming emergency room mailed her a bill for \$2,663.00. Because she was on “official leave” while in Zambia, there is “nowhere else [she] could have contracted [dengue fever],” and she missed almost 2 months of work recovering from the disease, appellant asserts it is “only fair” that the Office pay for the medical treatment she received in Wyoming.

Appellant also submitted an August 13, 2007 report in which Dr. Warren Sparks, Board-certified in emergency medicine, reported findings on examination and diagnosed “dengue-like [sic] illness, resolved,” right cervical lymphadenopathy and mild pharyngitis. In his report, Dr. Sparks opines:

“It certainly sounds like [appellant] had dengue [fever] which is after all the most common human arboviral infection in the world. Incubation period is up to 14 days. [sic] She has now recovered, and the importance of entertaining this possibility is, should she be infected with dengue again, she might well develop dengue hemorrhagic fever which carries with it a five percent mortality [rate]. She should be very careful in her future academic travels to avoid exposure to mosquitoes. I do not think it is necessary to obtain an IgM antibody [sic] for confirmation at this point. Her real concern today was a sore throat and cervical adenopathy, which seems typically viral.

By decision dated July 31, 2009, the Office denied to review the merits of her reconsideration request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that the evidence or 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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ 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.⁵

ANALYSIS

Appellant's reconsideration request neither alleged nor demonstrated 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).

Concerning the third enumerated ground, submission of new relevant and pertinent evidence not previously considered by the Office, appellant submitted her July 17, 2009 note and Dr. Sparks' report. The issue underlying appellant's claim was whether appellant contracted dengue fever while on temporary assignment in Africa.⁶ This is a medical issue, as appellant had previously not submitted any medical evidence to the record in support of her claim, Dr. Sparks' report is a medical report and is new and relevant evidence.

Dr. Sparks reported that appellant's "dengue-like illness [*sic*]" had resolved. The Office, in evaluating Dr. Sparks' report, concluded that merit review was not required because a firm diagnosis had not been established. The Board has previously stated that the standard to be

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ Where an employee is on temporary-duty status away from her regular place of employment, she is covered by the Act 24 hours a day with respect to any injury that results from activities essential or incidental to her temporary assignment. The fact that an employee is in travel status during the time a disabling condition manifests itself; however, does not raise an inference that the condition is causally related to the incidents of the employment. The medical evidence must establish a causal relationship between the condition and factors of employment. *See Susan A. Filkins*, 57 ECAB 630 (2006).

applied to reopen a case for further review of the merits does not allow for a weighing of the evidence in question.⁷

The requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge her burden of proof nor does it need to be dispositive. The claimant need only submit evidence that is relevant and pertinent and not previously considered. Accordingly, the Office should have reviewed appellant's case on the merits.

CONCLUSION

The Board finds that the Office improperly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this opinion.

Issued: May 7, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ *Billy B. Scoles*, 57 ECAB 258, (2005).