

FACTUAL HISTORY

This case has previously been before the Board. Appellant's September 19, 2005 occupational disease claim was accepted for aggravation of cervical spinal stenosis and displacement of cervical intervertebral discs at C3-7. The Office denied appellant's claim for a schedule award on March 14, 2008 on the grounds that she had not established any impairment to a scheduled member. Appellant submitted an untimely request for an oral hearing which was denied by the Branch of Hearings and Review on May 29, 2008. In a June 1, 2009 decision, the Board affirmed both decisions of the Office, finding that appellant did not have any permanent impairment to a scheduled member entitling her to a schedule award.² The facts of the case, as set forth in the prior decision, are incorporated herein by reference.

Appellant requested reconsideration before the Office on June 25, 2009. She requested that it authorize an additional impartial examination contending that Dr. Crowley was prejudiced and incorrect. Appellant alleged that an impairment rating for her cervical headaches should have been included and that she would submit additional medical evidence.

Appellant submitted a note from the Veterans Administration printed on June 3, 2009 diagnosing chronic intractable pain syndrome, cervical stenosis, myofascial pain syndrome or fibromyalgia, carpal tunnel syndrome and shoulder impingement syndrome.

By decision dated July 9, 2009, the Office denied reopening appellant's claim for further consideration of the merits. It found that the evidence submitted in support of her request for reconsideration was repetitive and cumulative and insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by the Office; or includes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608 of the Office's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.⁵

² On appeal to the Board appellant submitted new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

³ 5 U.S.C. §§ 8101-8193, 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

ANALYSIS

Appellant requested reconsideration of the merits of her claim on June 25, 2009. In support of her request, she submitted a note from the Veterans Administration printed on June 3, 2009. It diagnosed chronic pain syndrome, cervical stenosis and myofascial pain syndrome or fibromyalgia. The note did not include any information regarding appellant's claim of permanent impairment and therefore is not relevant to the issue on which her claim was denied. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.⁶

Appellant also disagreed with Dr. Crowley's selection as the impartial medical examiner and stated her opinion that he was prejudiced and incorrect. Appellant did not submit any factual or medical evidence to support her assertions regarding Dr. Crowley. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁷ There is no evidence supporting appellant's claims of bias by the physician or error in his reported findings. Appellant's unsupported allegation does not have a reasonable color of validity and is not sufficient to require the Office to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's claim for further reconsideration.

⁶ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *M.E.*, 58 ECAB 694 (2007).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2010
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