

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEREDITH M. TINSLEY and DEPARTMENT OF THE INTERIOR,
FIRE ISLAND NATIONAL SEASHORE, Fire Island, NY

*Docket No. 02-1850; Submitted on the Record;
Issued December 2, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Office accepted that, on August 16, 1993, appellant sustained an insect bite in the performance of duty and subsequently developed Lyme disease. Appellant did not stop work, but continued to receive medical treatment. On December 22, 1999 appellant filed a claim for a recurrence of disability.¹ She indicated that, on June 25, 1999, she stopped work due to worsening symptoms of her Lyme disease, including joint and muscle pain, sleeplessness, irritability, mental confusion, memory loss, depression and tooth and hair loss.

By letter dated May 18, 2000, the Office informed appellant of the type of evidence necessary to establish her claim.

By decision dated June 30, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning June 25, 1999, causally related to her accepted employment injury.

In a letter dated October 2, 2000, appellant requested reconsideration of the Office's decision and submitted additional medical evidence in support of her request. By decision dated December 22, 2000, the Office denied modification of the prior decision.

By letter dated December 21, 2001, appellant submitted additional evidence in support of her claim. By telephone call dated January 9, 2002, appellant inquired about her claim and stated that the intent of her December 21, 2001 letter had been to seek reconsideration. By letter dated January 10, 2002, she formally requested reconsideration of the Office's prior decision. In a decision dated April 3, 2002 and finalized April 4, 2002, the Office found the evidence and

¹ Appellant filed a previous claim for a recurrence of disability on May 18, 1999, however, at that time she had not stopped work.

arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The only decision before the Board in this appeal is the Office's decision dated April 3, 2002 and finalized April 4, 2002, denying appellant's request for reconsideration. As more than one year elapsed between the date of the Office's December 22, 2000 merit decision and the filing of appellant's appeal on July 2, 2002, the Board lacks jurisdiction to review the merits of appellant's claim.²

Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.⁴ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

Subsequent to the Office's December 22, 2000 decision, appellant submitted a letter requesting reconsideration together with additional medical evidence, but did not raise any legal arguments. In support of her request, appellant submitted medical reports dated November 30 and December 22, 2000 from Dr. Olaf Butchma, and a report dated May 6, 1999 from Dr. Susan Platkin. While these medical reports are new to the record, neither physician addressed the issue of whether appellant sustained a recurrence of disability on June 25, 1999, causally related to her employment injury. This evidence is irrelevant to the issue in the case and the subject of appellant's reconsideration request, and, therefore, are insufficient to warrant further merit review.⁶ In his medical reports, Dr. Butchma discussed only appellant's treatment and prognosis for returning to work and did not address the issue of appellant's work stoppage on June 25, 1999, or its causal relationship to her accepted employment injury. Similarly, Dr. Platkin evaluated and examined appellant with respect to her complaints of Lyme disease symptoms, but did not provide a diagnosis or discuss appellant's ability to work, either on June 25, 1999 or afterwards. Similarly, appellant submitted numerous laboratory reports, diagnostic studies and

² 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

⁶ *James E. Salvatore*, 42 ECAB 309 (1991).

operative reports from her treating physicians, which also contain no discussion of appellant's ability to work after June 25, 1999. This evidence is insufficient to warrant merit review.⁷

In addition, appellant submitted reports from Dr. Butchma dated March 2, June 20, July 10 and September 27, 2000, a report from Dr. Nicholas P. Craig dated April 20, 2000 and a report from Dr. Peter D. LeRoix dated March 17, 2000. However, as each of these reports was in the record prior to the Office's last merit decision, these reports are duplicative and are therefore insufficient to warrant reopening appellant's claim for further merit review.⁸

As all of the evidence submitted by appellant was either duplicative, repetitious or did not address the relevant issue, and as appellant failed to raise substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated April 3, 2002 and finalized April 4, 2002 is hereby affirmed.

Dated, Washington, DC
December 2, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Id.*

⁸ Material which is repetitious or duplicative of that already in the case record is of no evidentiary value and does not constitute a basis for reopening a claim. *Norman W. Hanson*, 40 ECAB 1160 (1989).