

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Daytona Beach, FL, Employer**)

**Docket No. 06-849
Issued: February 7, 2007**

Appearances:

*Ronald S. Webster, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2006 appellant filed a timely appeal of a November 29, 2005 decision of the Office of Workers' Compensation Programs which denied merit review. Because more than one year has elapsed between the most recent merit decision dated April 22, 2004 and the filing of this appeal on February 27, 2006, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

This is the second appeal before the Board. In a December 21, 2004 decision, the Board affirmed the Office's decision dated April 22, 2004. The Board determined that appellant did not meet his burden of proof in establishing that he developed a loss of lung capacity and chronic

fatigue syndrome in the performance of duty. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

On November 17, 2005 appellant requested reconsideration. He submitted a November 7, 2005 report from Dr. Mohammad A. Latif, a Board-certified internist, who noted first treating him in January 2002 and that appellant reported working in a "sick building" for several years. Dr. Latif noted a history of heart attack in 1996, a shunt replacement twice in 1998, a back injury in 1998 and asthma as a child. He indicated that appellant had been diagnosed with noninsulin-dependent diabetes mellitus, chronic obstructive pulmonary disease and hypertension. Appellant further reported that he was treated for persistent sinus drainage, shortness of breath, wheezing, swelling in the legs/feet and fatigue. Dr. Latif listed appellant's complaints of numbness and tingling of the hands which caused him to drop things, memory loss, weight gain and depression. He advised that appellant's workplace was declared a "sick building" in 1997. Dr. Latif noted that reports show that fungi infections of Penicillium could cause respiratory and allergic diseases such as allergic rhinitis, asthmas and hypersensitivity pneumonitis. He indicated that occupational asthma and pneumonitis have been documented in working environments where spores of fungi are predominate and some of these organisms are opportunistic and can cause secondary diseases in immunocompromised persons. Dr. Latif opined that appellant was permanently disabled.

By decision dated November 29, 2005, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,³ which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

"(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]."

¹ Docket No. 04-1657 (issued December 21, 2004).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

Appellant's November 17, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he 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 his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a November 7, 2005 medical report from Dr. Latif. However, this report is not relevant because Dr. Latif did not specifically address whether the diagnosed conditions of persistent sinus drainage, shortness of breath, wheezing, swelling in the legs/feet and fatigue are causally related to specific employment factors. Additionally, this report is essentially duplicative of Dr. Latif's prior reports dated March 5 and December 31, 2002 already of record and previously considered by the Office.⁵ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."⁶

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his November 17, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

⁴ 20 C.F.R. § 10.608(b).

⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2007
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