

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

V.S., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, FOOD & DRUG
ADMINISTRATION, San Francisco, CA,
Employer**)

**Docket No. 07-4
Issued: February 20, 2007**

Appearances:
Appellant, pro se
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 September 25, 2006 appellant filed a timely appeal from a July 31, 2006 Office of Workers' Compensation Programs' decision which denied her request for reconsideration. Because more than one year has elapsed from the last merit decision dated June 6, 2005 to the filing of this appeal, 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 on appeal is whether the Office properly denied appellant's request for reconsideration as insufficient to warrant further merit review.

FACTUAL HISTORY

On December 17, 2003 appellant, then a 52-year-old investigator, filed a traumatic injury claim alleging that she injured her left shoulder and right pelvis and lumbar area while lifting a briefcase out of her car. In a letter dated December 17, 2003, Dr. Raymond W. Fursman, a

chiropractor, opined that appellant's shoulder and right hip were an exacerbation of a previous injury. He placed work restrictions on appellant and stated that the duration of appellant's injury would be 12 to 16 weeks. On August 24, 2004 the Office received appellant's medical records from Totem Lake Chiropractic Center consisting of numerous unsigned examination and treatment notes. X-rays were not included in the records.

In a letter dated August 27, 2004, the Office informed appellant that the evidence received was insufficient to establish her claim. It requested further information. Appellant did not respond.

In a June 6, 2005 decision, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the accepted incident.

In a May 25, 2006 letter, appellant requested reconsideration. Attached to the letter was additional medical documentation consisting of Virginia Mason clinic notes and Group Health Cooperative clinic notes. The unsigned Virginia Mason Medical Center notes from Dr. Jeffrey Carlin, Board-certified in internal medicine, discussed appellant's condition as of August 30, 2005 and diagnosed fibromyalgia. The Group Health Cooperative notes from Dr. Robert M. Kowalewski, Board-certified in internal medicine, discussed appellant's condition as of September 20, 2005 and diagnosed fibromyalgia.

In a June 7, 2006 decision the Office denied reconsideration on the grounds that the evidence was insufficient to warrant further merit review.¹

In a letter dated July 4, 2006, appellant requested reconsideration of her claim.

In a letter dated July 13, 2006, the Office acknowledged receipt of appellant's July 4, 2006 letter. The Office asked appellant for clarification on the type of reconsideration she was requesting and informed her of the appeal process. Appellant did not respond.

On July 31, 2006 the Office denied reconsideration.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for

¹ The Office correspondence on June 7, 2006 and July 13, 2006 were sent to an incorrect address provided by appellant. Copies of both decisions were sent by letter on July 27, 2006.

² 20 C.F.R. § 10.606(b)(2) (2003).

reconsideration without reopening the case for a review on the merits.³ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁴

ANALYSIS

The Office issued decisions on June 7 and July 31, 2006, denying reconsideration of its June 6, 2005 decision on the grounds that the evidence submitted was insufficient to warrant further merit review. The Board must determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to appellant's application for reconsideration and any evidence submitted in support thereof.

In the present case, appellant's application for review of the Office's June 6, 2005 decision did not satisfy the standards of 20 C.F.R. § 10.606(b). Appellant's May 25, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by the Office. Therefore 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted additional documentation with her May 25, 2006 request. These consisted of unsigned examination notes from Dr. Carlin and examination notes from Dr. Kowalewski. Dr. Carlin's notes addressed appellant's general health on the date of the examination and her medical history. His note contains no discussion of the work incident of December 8, 2003 or appellant's alleged shoulder and back injury. There is no mention of any condition related to appellant's claim. There is no medical opinion as to the causal relation between the work incident and the alleged injury. As such, this evidence is not relevant to the underlying claim. Similarly, the report of Dr. Kowalewski is irrelevant as he did not discuss the accepted work incident or provide any statement on causal relation. Neither of the documents reaches the standard of relevant and pertinent new evidence under the third requirement of section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for a review on the merits.

³ 20 C.F.R. § 10.608(b) (2003).

⁴ *Annette Louise*, 54 ECAB 783 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 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