

compensation. The Office stated that the evidence was insufficient to establish an employment incident as alleged, and the medical evidence did not establish an injury on January 8, 2005.

Appellant requested reconsideration and submitted additional factual and medical evidence. In a decision dated June 6, 2006, the Office reviewed the case on its merits and denied modification. The Office found that the medical evidence was insufficient to establish an injury causally related to the January 8, 2005 employment incident.

By letter dated June 5, 2007, appellant requested reconsideration of her claim. She submitted a September 27, 2006 report from Dr. Kyle Fuchs, an internist, indicating that she was treated for respiratory symptoms. Dr. Fuchs stated that appellant had multiple painful areas and he referred to left chest pain after an accident in 2005. Appellant also submitted an October 3, 2006 report from attending physician, Dr. Jason Fleiss, an occupational medicine specialist. The diagnoses included carpal tunnel syndrome, hemoptysis, chronic pain, somatization disorder, acute reaction to stress, hip and thigh sprain/strain and cervical sprain/strain. Dr. Fleiss noted that appellant was not working and had retired from her nursing assistant position. He opined that appellant was disabled.

The evidence submitted on reconsideration included Office of Personnel Management documents relating to application for disability retirement and a May 4, 2005 statement regarding Family Medical Leave Act (FMLA) that was previously of record. Appellant also submitted a June 8, 2006 report from a physician's assistant and a narrative statement regarding her disability for work.

In a decision dated August 17, 2007, the Office found the request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."² Section 10.608(b) states that any application for reconsideration that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

¹ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS

Appellant submitted an application for reconsideration dated June 5, 2007. She referred to “legal arguments” with respect to a memorandum dated May 4, 2005 regarding the FMLA that was previously of record. The memorandum is not new evidence and does not advance a new and relevant legal argument. The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

With respect to the evidence submitted with the application for reconsideration, the Board notes that to require the Office to reopen the case for review of the merits, the evidence must be both new and relevant to the underlying merit issue. In this case, the June 6, 2006 Office decision had denied the claim on the grounds the medical evidence did not establish causal relationship between a diagnosed condition and a January 8, 2005 employment incident. Appellant must submit new and relevant medical evidence on causal relationship to warrant reopening her claim for merit review. The medical reports from Dr. Fuchs and Dr. Fleiss are new, but they are not relevant to the issue presented. Neither physician discussed the January 8, 2005 employment incident or provided an opinion on causal relationship between a diagnosed condition and the employment incident. None of the evidence submitted is new and relevant evidence sufficient to warrant merit review.⁴

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Pursuant to 20 C.F.R. § 10.608, the Office properly denied the application for reconsideration without reviewing the merits of the claim.

CONCLUSION

The Office properly denied the application for reconsideration without merit review of the claim.

⁴ As to medical evidence from a physician’s assistant, this does not constitute competent medical evidence as a physician’s assistant is not a physician under 5 U.S.C. § 8101(2). *George H. Clark*, 56 ECAB 162 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2007 is affirmed.

Issued: May 8, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board