



## **FACTUAL HISTORY**

On January 11, 2000 appellant, then a 35-year-old customer service representative, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. The Office accepted her claim for neck strain and bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on July 26, 2000 and a left carpal tunnel release on October 11, 2000. On January 1, 2001 she returned to work with restrictions.

Appellant filed claims for compensation on account of disability requesting compensation for May 22 through June 25, 2001 and October 9 through 12, 2001. On October 29, 2001 she filed a recurrence of disability claim on October 9, 2001 due to her accepted employment injury. Appellant stopped work on October 9, 2001 and returned to work on October 15, 2001. By decision dated February 25, 2002, the Office found that the medical evidence was insufficient to establish that she sustained an employment-related recurrence of disability beginning October 9, 2001.

On March 5, 2001 appellant requested an oral hearing, which was held on July 25, 2002. By decision dated October 30, 2002, the hearing representative affirmed the Office's February 25, 2002 decision. He found that the medical evidence failed to show that appellant's condition changed such that she was unable to perform the duties of her limited-duty employment from May 22 through June 25, 2001 or October 9 through 12, 2001.

On October 27, 2003 appellant requested reconsideration of her claim. By decision January 13, 2004, the Office denied modification of its October 30, 2002 decision. It noted that appellant attributed her condition to continuing factors of employment and advised her to file a new occupational disease claim.

Appellant again requested reconsideration on May 20, 2004. In an August 16, 2004 decision, the Office denied modification of its January 13, 2004 decision. On August 12, 2005 appellant requested reconsideration. By decision dated September 9, 2005, the Office denied modification of its August 16, 2004 decision. It noted that it had previously instructed her to file another occupational disease claim as she cited additional work exposure as a cause of her condition.

On September 8, 2006 appellant requested reconsideration of the claim. She stated, "I have attached additional documentation to support that I am injured due to working for the [employing establishment] for 20 plus years." Appellant asked that the Office consider her claims for compensation from 2004 to 2006 and that the Office compensate her for "medical breaks." She attached a January 3, 2006 letter from the Office requesting that she submit medical evidence supporting her claims for compensation on account of disability (Forms CA-7) for the period April to June 2005.

With her request for reconsideration, appellant submitted a February 15, 2005 progress report from Dr. Michael P. Azevedo, a Board-certified internist and physiatrist, who diagnosed chronic neck and shoulder girdle pain and overuse syndrome of the upper extremity. She also resubmitted an April 4, 2005 report from Dr. Azevedo. In a certification of health care provided

form dated May 30, 2006, Dr. Azevedo diagnosed cervical disc problems and bilateral carpal tunnel syndrome. He opined that appellant might require as much as two weeks off every two months. Dr. Azevedo found that she could work with restrictions.

In form reports dated February 27 and July 6, 2006, Dr. Azevedo diagnosed chronic overuse syndrome, chronic discogenic neck pain and bilateral carpal tunnel syndrome. He checked “yes” that the condition was employment related and found that appellant required medical breaks to prevent increased neck and upper extremity pain. Dr. Azevedo opined that she was partially disabled for the periods in an attached document. Appellant provided a list of dates missed from work due to her medical condition in 2004 and 2005.<sup>2</sup> In a decision dated September 21, 2006, the Office denied her request for reconsideration on the grounds that it was untimely filed and did not present clear evidence of error. By order dated May 21, 2007, the Board set aside the September 21, 2006 decision.<sup>3</sup> The Board found that the request for reconsideration was timely as it was unable to determine whether the postmark associated with the request was from the envelope containing appellant’s reconsideration request. The Board remanded the case for the Office to consider her timely reconsideration request.

By decision dated September 28, 2007, the Office determined that it was unclear whether appellant was requesting reconsideration of the September 9, 2005 decision or of a development letter dated January 3, 2006 which was attached to the request. It noted that she was unable to request reconsideration of the January 3, 2006 development letter as it was not a final decision. The Office thus treated appellant’s September 8, 2006 letter as a request for reconsideration of the most recent decision dated September 9, 2005. It denied her request for reconsideration after finding that it 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,<sup>4</sup> the Office’s regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup>

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<sup>2</sup> The record contains numerous other medical reports submitted subsequent to the Office’s last merit decision.

<sup>3</sup> Order Remanding Case, Docket No. 07-183 (issued May 21, 2007).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.”

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>8</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant sustained neck strain and bilateral carpal tunnel syndrome due to factors of her federal employment. Appellant underwent bilateral carpal tunnel releases in July and October 2000 and resumed limited-duty employment on January 1, 2001. She filed claims for compensation on account of disability for the periods May 22 through June 25, 2001 and October 9 through 12, 2001. Appellant also alleged that she sustained a recurrence of disability from October 9 to 15, 2001. In decisions from 2002 to 2006, the Office found that she had not submitted sufficient medical evidence to show that she was disabled from her limited-duty position during the periods in question.

On September 8, 2006 appellant requested reconsideration of the claim. She indicated that she had included evidence showing that she was injured due to her work for the employing establishment. Appellant requested that the Office consider her claims for compensation from 2004 to 2006 and that the Office compensate her for “medical breaks.” She attached a January 3, 2006 letter from the Office requesting that she submit medical evidence supporting her claims for compensation on account of disability (Forms CA-7) for the period April to June 2005.

In support of her request for reconsideration, appellant resubmitted an April 4, 2005 report from Dr. Azevedo. Evidence which repeats or duplicates evidence already in the case record, however, has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup>

In a February 15, 2005 progress report, Dr. Azevedo diagnosed chronic neck and shoulder girdle pain and overuse syndrome of the upper extremity. In a May 30, 2006 form report, he diagnosed cervical disc problems and bilateral carpal tunnel syndrome. Dr. Azevedo indicated that she could work with listed limitations but may require up to two weeks off every two months. In February 27 and July 6, 2006 form reports, he diagnosed chronic overuse syndrome, chronic discogenic neck pain and bilateral carpal tunnel syndrome. Dr. Azevedo opined that appellant required medical breaks to prevent an increase in pain. He indicated that she was partially diagnosed for dates listed in an attached document. Appellant provided a list of dates missed from work due to her medical condition in 2004 and 2005. The relevant issue, however, is whether she has established disability for employment for the periods May 22 through June 25, 2001 and October 9 through 15, 2001. None of the evidence submitted with

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<sup>8</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>9</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>10</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>11</sup> *Richard Yadron*, 57 ECAB 207 (2005).

appellant's request for reconsideration addresses these periods. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.<sup>12</sup>

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.<sup>13</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for merit review of her claim pursuant to section 8128.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 28, 2007 is affirmed.

Issued: October 22, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>13</sup> The record contains numerous other reports from Dr. Azevedo dated 2005 to 2007; however, none of these reports addresses the extent of appellant's disability for the relevant dates in 2001 and thus are insufficient to warrant reopening her case for merit review. *Id.*