

FACTUAL HISTORY

On March 12, 2007 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he sustained poor circulation in his legs due to factors of his federal employment. He related that he experienced pain in his legs beginning in 1998 after walking three or four blocks at work. Appellant continued working with limitations on walking.

By decision dated May 17, 2007, the Office denied appellant's claim on the grounds that he did not establish the occurrence of the claimed work factors and did not submit any supporting medical evidence.

On May 16, 2008 appellant, through his attorney, requested reconsideration. Counsel asserted that he was submitting medical reports dated November 7, 2007 and April 17, 2008 showing that appellant's employment aggravated his peripheral arterial disease. He maintained that the newly submitted evidence was sufficient to require the Office to further develop the medical evidence.

By decision dated June 12, 2008, the Office denied appellant's request for reconsideration on the grounds that he did not submit evidence or argument sufficient to warrant reopening his case for further review of the merits under section 8128. It noted that he did not submit any new or relevant evidence with his request for reconsideration.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ 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.⁴ 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.⁵

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.⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does

² 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."

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

not constitute a basis for reopening a case.⁷ 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.⁸

ANALYSIS

By decision dated May 17, 2007, the Office found that appellant had not submitted factual and medical evidence sufficient to establish his occupational disease claim. On May 16, 2008 appellant requested reconsideration and asserted that he was enclosing medical evidence dated November 7, 2007 and April 17, 2008. The Office, however, did not receive any medical evidence submitted with appellant's request for reconsideration or prior to its June 12, 2008 decision.

Appellant's attorney contended that the medical evidence submitted with his reconsideration request was sufficient to require the Office to further develop the record. As there was no medical evidence submitted, however, his argument does not have a reasonable color of validity such that it would warrant reopening the case for merit review.⁹

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or submitted new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

On appeal appellant, through his attorney, contends that he sent new medical evidence to the Office with his request for reconsideration, including medical reports dated November 7, 2007 and April 17, 2008. As noted, however, the case record does not contain a copy of these reports.

CONCLUSION

The Board finds that the Office properly denied his request for further review of the merits of his claim under 5 U.S.C. § 8128.

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

⁹ *M.E.*, 58 ECAB ____ (Docket No. 07-1189, issued September 20, 2007); *Elaine M. Borghini*, 57 ECAB 549 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 12, 2008 is affirmed.

Issued: March 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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