

In a report dated April 18, 2007, Dr. Lee D. Hieb, a Board-certified orthopedic surgeon, stated that appellant had complaints of neck pain radiating into his bilateral shoulders, hands and forearms, associated with tingling in his hands and pain radiating up to his face. Appellant occasionally experienced a “cervical rotation” to the right which caused a sensation of tightness in his scalp and/or a whooshing sound in his ears. Dr. Hieb stated that these symptoms had been present for the past six months and prevented appellant from turning his head to look while driving or climbing on equipment. This interfered with appellant’s job as a heavy equipment operator. Dr. Hieb noted that radiographs of the cervical spine, in the anterior-posterior (AP) and lateral projections, revealed normal sagittal alignment with some loss of lordosis and very small local kyphosis at C3-4. Soft tissues are normal. He noted normal bone quality and well-preserved disc heights. The results of a magnetic resonance imaging (MRI) scan showed inflammation at the right C3-4 facet joint with some disc osteophyte complexes at C6-7, C4-5 and C5-6. Dr. Hieb also noted that flexion and extension views demonstrated some minimal instability at C3-4 and C4-5, oblique views showed very significant bony overgrowth into the neural foramina. He concluded that appellant had cervical radiculopathy and possibly some segmental instability but the situation was complicated by multilevel foraminal stenosis. Dr. Hieb recommended that appellant undergo cervical traction.

By letter dated June 15, 2007, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms, the medical reasons for his condition and an opinion as to whether his claimed conditions were causally related to his federal employment. Appellant did not submit any additional medical evidence.

By decision dated August 21, 2007, the Office denied appellant’s claim, finding that he failed to submit sufficient medical evidence to establish that he sustained a right shoulder condition in the performance of duty.

On August 12, 2008 appellant requested reconsideration. He submitted a CA-1 claim form pertaining to a July 8, 1996 injury to the forehead and left eye. Appellant also submitted treatment notes from the employing establishment health clinic dated from 1987 to October 2005, which indicated that he was seen for a variety of conditions, including right knee pain, bilateral shoulder pain and migraine headaches. None of the progress notes offered any opinion regarding the cause of the various conditions treated.

By decision dated November 13, 2008, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting

relevant and pertinent evidence not previously considered by the Office.¹ 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.²

ANALYSIS

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, he did not advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent evidence not previously considered. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.³ The evidence appellant submitted is not pertinent to the underlying issue in his case. His previous 1996 claim for traumatic injury is not new and relevant evidence pertinent to the current claim. Appellant submitted treatment notes from the employing establishment health clinic dated 1987 to October 2005. They reflect that he had been treated for right knee pain, bilateral shoulder pain and migraine headaches. However, this evidence is not relevant to appellant's claim of occupational disease in 2007 as it did not provide any medical opinion relevant to whether he developed neck, head, scalp, right shoulder and right arm conditions due to factors of his employment. His reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 7, 2009
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