

On October 14, 2005 she requested that her claim be reopened and included a letter from Dr. Anthony Cabot, a Board-certified orthopedic surgeon, who opined that appellant needed total

knee replacement. On November 9, 2005 the Office accepted appellant's claim for temporary aggravation of osteoarthritis of both knees.

The Office referred appellant for a second opinion examination with Dr. Joseph Hoffman, an orthopedist, on December 29, 2005. Dr. Hoffman opined that appellant had no evidence of the abrasions sustained in her December 1989 injury. He diagnosed bilateral osteoarthritis in her knees but opined that this was due to her history of morbid obesity rather than a direct result of the fall. In a January 24, 2006 addendum, Dr. Hoffman noted that appellant had not sustained any aggravation of preexisting osteoarthritis in her knees due to her accepted injury.

On January 31, 2006 the Office issued a notice of proposed termination of medical and compensation benefits for her accepted conditions of bilateral osteoarthritis of the lower leg and bilateral abrasion of hip/leg.

In a May 10, 2006 decision, the Office terminated appellant's medical and compensation benefits.

Appellant requested an oral hearing which was held on October 10, 2006. In a December 18, 2006 decision, the Office affirmed the May 10, 2006 decision finding that the evidence established that appellant's abrasions had resolved and that there was no medical evidence of any aggravation of her preexisting osteoarthritis.

On December 18, 2007 appellant requested reconsideration, contending that she presented medical evidence to the Office which was ignored and not previously considered.

In a January 14, 2008 nonmerit decision, the Office denied appellant's request for reconsideration, finding that as she did not submit new and relevant evidence or raise a substantive legal question appellant was not entitled to a merit review.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>1</sup>

Section 8128(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>2</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary

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<sup>1</sup> 20 C.F.R. § 10.606(b)(2)(i-iii).

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

value and does not constitute a basis for reopening a case.<sup>3</sup> Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.<sup>4</sup>

### **ANALYSIS**

The Board finds that appellant has not met any of the criteria for reopening her case for review of the merits. Merit review was denied by the Office on the grounds that she did not submit any new or relevant medical evidence or raise a new legal argument. Appellant argued that the Office failed to consider medical evidence previously submitted; however, she did not identify any documents the Office ignored. The validity of appellant's argument that the Office ignored evidence fails for lack of specificity. Appellant did not submit any new evidence. She merely contended that the Office did not consider evidence. This is not an argument that the Office erroneously applied a specific point of law or a relevant legal argument, either of which would require the Office to conduct further merit review. The Office properly denied appellant's request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.

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<sup>3</sup> *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

<sup>4</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board