United States Department of Labor
Employees' Compensation Appeals Board

G.G., Appellant	)	
and	)	**Docket No. 08-45**
	)	**Issued: June 10, 2008**
DEPARTMENT OF THE AIR FORCE, U.S. AIR FORCE ACADEMY, Colorado Springs, CO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2007 appellant filed a timely appeal of the February 15, 2007 merit decision of the Office of Workers' Compensation Programs terminating her wage-loss compensation benefits. She also requested review of the Office's June 29, 2007 merit decision denying her claim for wage-loss compensation for intermittent periods from January 25 through March 9, 2006, and the June 29, 2007 nonmerit decision denying merit review of its April 14, 2006 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this appeal.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective February 15, 2007 on the basis that she did not have any remaining disability causally related to her accepted employment injuries; (2) whether appellant established entitlement to wage-loss compensation for intermittent periods of disability from January 25 through March 4, 2006; and (3) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 2, 2004 appellant, a 58-year-old equal employment specialist, sustained injuries to her head, right hip and neck when she slipped and fell on ice. The Office accepted appellant's claim for concussion, cervical strain and lumbar strain.

Appellant was treated by Dr. Joyce Michael, a Board-certified osteopath, specializing in the area of family practice, and Dr. James H. Evans, a clinical psychologist. She also received periodic acupuncture treatments and steroid injections. On February 22, 2005 Dr. Evans performed a neuropsychological evaluation, which showed evidence of mild mental impairment, which he opined affected appellant's workplace performance. On April 28, 2005 he diagnosed reactive depression and anxiety. On May 4, 2005 Dr. Michael released appellant to return to work four hours per day, provided that she was restricted from lifting more than 10 pounds; pushing or pulling more than 20 pounds; and reaching above her shoulder, twisting, bending, stooping, climbing or squatting. On May 11, 2005 appellant accepted a light-duty assignment as a modified equal employment specialist, which complied with Dr. Michael's work limitations. The Office paid appellant compensation benefits for periodic disability.

On June 8, 2005 Dr. Michael recommended that appellant be limited to six hours per day, three days per week, for one to two months. On June 15, 2005 she recommended that appellant's hours be increased to eight hours per day after two weeks. On July 11, 2005 Dr. Michael opined that appellant could work three days per week, to be increased to four days per week after two weeks. In an August 31, 2005 attending physician's report, she noted that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed Grade 1 spondylolisthesis at L4-5. Dr. Michael opined that the condition was causally related to appellant's November 30, 2004 work-related injury. In an accompanying duty status report, she stated that appellant could work eight hours per day, three days per week. On September 8, 2005 appellant signed a modified light-duty assignment, which provided that she would work eight hours per day, three days per week.

On June 2, 2005 Dr. Evans indicated that appellant was suffering from intractable headache pain, and had resolving problems with attention, concentration and memory. On June 28, 2005 he stated that appellant was struggling emotionally, due to family stress and her husband's health.

The Office referred appellant to Dr. Hendrick J. Arnold, a Board-certified orthopedic surgeon, for an examination and an opinion as to whether appellant suffered residuals from her accepted conditions and, if so, whether she was disabled. It also referred appellant to Dr. Arthur C. Roberts, a Board-certified psychiatrist, for an examination and an opinion as to whether appellant had ongoing cognitive dysfunction as a result of her closed-head injury.

In a second opinion report dated September 20, 2005, Dr. Roberts diagnosed mild cognitive impairment due to head trauma, and postconcussive headaches, resolving. He indicated that appellant met the standard for migraine, post-traumatic, and that she had preexisting sarcoidosis. Noting that he was addressing only psychological issues, Dr. Roberts stated that appellant did not suffer from a diagnosable emotional condition which interfered with her ability to work. However, he opined that she did have residuals from the work-related injury,

such as confusion, forgetfulness and dizziness, which would make it difficult to teach seminars. Dr. Roberts explained that these events were caused by microscopic damage to the structures within the brain, which have to do with short-term memory. He agreed with the recommendation that appellant should be restricted to working part time for four to five months, then return to full-time employment. In an accompanying work capacity evaluation, Dr. Roberts stated that appellant was adequately recovered and eager to work, and was able to work eight hours per day "now."

In a second opinion medical report dated September 21, 2005, Dr. Arnold diagnosed lumbar and cervical strain, causally related to accepted employment factors. Based on his examination, he stated that appellant had limited range of motion in her neck, and somewhat limited lumbar motion, with tenderness in these areas. An April 29, 2005 MRI scan report showed some disc dessication consistent with degenerative disc disease, which he opined were age related. X-rays of the lumbar spine showed multilevel degenerative changes and fusion of L5 transverse process. A March 20, 2005 MRI scan of the brain was "normal." Dr. Arnold stated that appellant had no significant physical limitations due to her accepted injury, although she had subjective complaints of pain and headache. He opined that her workweek should be gradually increased to eight hours per day, five days per week. A September 20, 2005 work capacity evaluation reflected Dr. Arnold's opinion that appellant was able to work eight hours per day, provided that she was restricted from lifting 15 pounds, and took a 15-minute break every hour. On September 26, 2005 Dr. Arnold stated that he had reviewed an August 22, 2005 MRI scan report subsequent to preparing his second opinion report. He noted mild cervical degenerative changes, plus lumbar spondylolisthesis at L4-5, Grade 1, with severe facet arthropathy. Dr. Arnold indicated that the MRI scan report did not provide a reason to modify his recommendation of September 20, 2005.

In a report dated October 24, 2005, Dr. Evans opined that appellant was able to work eight hours per day. He stated, "There are no neuron-psychological restrictions nor limitations preventing [appellant] from working eight hours a day" in her usual job. Dr. Evans deferred to Dr. Michael regarding recommended medical restrictions.

The Office sent copies of Dr. Roberts' and Dr. Arnold's second opinion reports to Dr. Michael and Dr. Evans, asking whether they agreed with the recommendations of the two physicians. On October 28, 2005 Dr. Evans indicated, by placing a checkmark in a box provided on a form that he concurred with the reports. On November 1, 2005 Dr. Michael indicated, by placing a checkmark in a similar box, that she also concurred with the recommendations.

On November 22, 2005 the Office asked Dr. Arnold to clarify his proposed timeline for increasing appellant's work hours. It also asked him to provide medical rationale explaining why a gradual increase was necessary, rather than an immediate return to full-time employment. On December 1, 2005 Dr. Arnold stated that physically, appellant was able to return to work 40 hours per week immediately, but that, psychologically, a gradual increase would be easier. He recommended that appellant start at four hours per day, increasing to eight hours per day over a three-month period.

The record contains an August 22, 2005 report of an MRI scan of the lumbar spine, and an April 29, 2005 report of an MRI scan of the cervical spine. The record also contains the

following reports dated October 7, 2005: MRI scan of the lumbar spine; nerve conduction study and electromyography (EMG) report; MRI scan of the cervical spine; report of bone densitometry; x-ray of the skull; x-ray of the lumbar spine; and an x-ray of the cervical spine. Appellant submitted a report dated October 7, 2005 from Dr. John C. Chiu, a treating physician, who noted appellant's complaints of intractable and increasing pain in her low back, legs, and neck, as well as dizziness, frequent occipital headaches and poor memory. Dr. Chiu diagnosed postconcussion syndrome, post-traumatic lumbar disc herniation with lumbar radiculopathy, post-traumatic cervical disc herniation with cervical radiculopathy, and post-traumatic thoracic strain/disc disease. He recommended a lumbar discectomy.

In a January 1, 2006 report, Dr. Michael diagnosed lumbar radiculopathy, and she found tenderness in the lumbar spine and right leg weakness. She stated that appellant needed to work from home four hours per day, five days per week. On January 9, 2006 Dr. Michael stated that, after reviewing the October 7, 2005 EMG report, she did not concur with Dr. Arnold's second opinion report, noting that appellant had increased pain in the lower back, with radiculopathy.

Appellant filed claims for compensation for intermittent wage loss for the period November 13, 2005 through January 21, 2006. She claimed compensation for 32 hours of lost wages for each of the following periods: November 13 through 26, November 27 through December 10, 2005; December 25, 2005 through January 7, 2006; and January 8 through 21, 2006. By letter dated March 10, 2006, the Office informed appellant that the information submitted was insufficient to support disability during the periods claimed. Based on the time frames provided by Dr. Arnold, the Office advised appellant that 112 of the 128 hours claimed would be deferred, pending receipt of additional information. The record reflects that appellant underwent laparoscopic gastric bypass surgery in California on January 31, 2006. On March 16, 2006 Dr. Michael stated that, due to complications from the gastric bypass surgery, appellant would be disabled from work for 12 weeks.

By decision dated April 14, 2006, the Office denied appellant's claims for compensation for the following periods: November 13 through 26 (24 hours); November 27 through December 10, 2005 (24 hours); December 25, 2005 through January 7, 2006 (32 hours); and January 8 through 21, 2006 (32 hours).

On June 27, 2006 Dr. Michael indicated that appellant's back pain was becoming more and more debilitating. In a July 14, 2006 duty status report, she opined that appellant could work four hours per day, three days per week; however, she should be restricted from lifting or carrying more than five pounds, and must be permitted to change positions frequently.

The Office found a conflict in medical opinion between Dr. Michael and Dr. Arnold as to the number of hours appellant was capable of working. In order to resolve the conflict, the Office referred appellant, together with the entire medical record and statement of accepted facts, to Dr. Jeffrey Sabin, a Board-certified orthopedic surgeon. In a report dated July 20, 2006, Dr. Sabin diagnosed cervical and lumbar strain. He noted that appellant had some mild degenerative changes in the cervical and lumbar spine, which were preexisting to the accepted injury. Dr. Sabin stated that there was no objective reason why appellant could not work eight hours per day, and that her physical limitations were self-imposed. Examination revealed normal cervical and lumbar lordosis; good range of motion in extremities, without crepitus, instability or

atrophy; and good internal and external rotation of hips without pain. Cervical range of motion was normal, except for rotation to the right, which was diminished by 60 percent. Lumbar range of motion revealed increased pain with extension to 20 degrees. Dr. Sabin found pain to palpation at the L5-S1 paraspinal musculature. X-rays and MRI scans reveal no severe disc disease. The L5-S1 area was sacralized, and L4-5 appeared to be the last motion segment. Dr. Sabin stated that it was reasonable for appellant to work toward increasing her four-hour per day schedule (three days per week) to full time, over a two- to three-month period.

By letter dated August 23, 2006, the Office asked Dr. Sabin to clarify his July 20, 2006 report by indicating whether appellant had residuals of her work-related injury. On August 30, 2006 Dr. Sabin stated that there were no objective findings to support residuals of appellant's accepted conditions of cervical and lumbar strain.

Appellant submitted a report dated September 5, 2006 from Dr. Michael C. Sparr, a Board-certified physiatrist, who diagnosed chronic, severe lumbosacral and lower extremity pain, "which appears to be secondary to a November 30, 2004 work-related injury." Dr. Sparr found moderate to severe foraminal stenosis at two levels in the lumbar spine, and evidence of spondylolisthesis in a lumbar flexion film. He noted excellent range of motion in forward flexion, but exquisite tenderness over the right ilioinguinal ligament, hip flexors and pubic symphysis. Dr. Sparr stated, "At this time her diagnoses are not entirely clear." He did not express an opinion as to appellant's ability to work. On October 5, 2006 Dr. Sparr noted that appellant had experienced a substantial decrease in pain, and that "work restrictions are not necessary." On November 3, 2006 he indicated that appellant was 80 percent improved and experiencing minimal pain.

On December 6, 2006 the Office issued a proposed notice of termination of wage-loss compensation benefits, stating that the weight of medical evidence, which was represented by the opinion of Dr. Sabin, demonstrated that appellant had no continuing injury-related disability as a result of her accepted injury. "It provided appellant 30 days to submit additional evidence in support of her continuing disability.

Appellant submitted notes from Dr. Evans dated December 12, 2006, and January 9 and 23, 2007. Dr. Evans stated that appellant had retired from federal service and was managing quite well from a psychological perspective.

By decision dated February 15, 2007, the Office terminated appellant's wage-loss compensation. It noted that appellant's medical benefits referable to the employment injury remain uninterrupted.[1]

[1] The Board notes that the Office issued a decision dated January 29, 2007, which terminated appellant's medical and wage-loss compensation. On February 15, 2007 the Office amended its January 29, 2007 decision, terminating only appellant's wage-loss benefits.

The Board also notes that the Office terminated appellant's medical benefits on April 10, 2007. However, by decision dated July 24, 2007, an Office hearing representative reversed the decision terminating appellant's medical benefits.

Appellant submitted attending physician reports from Dr. Michael for the period August 5 through November 25, 2005. On October 26, 2005 Dr. Michael stated that appellant could work 28 hours per week with restrictions, and estimated that her recovery date would be December 30, 2005. On November 25, 2006 she opined that appellant could work 28 hours per week, with a gradual increase in hours, as tolerated. Dr. Michael also stated that appellant might need surgery on the lumbar spine.

On April 13, 2007 appellant submitted a request for reconsideration of the April 14, 2006 decision denying her claim for compensation for intermittent periods between November 13, 2005 and January 21, 2006. In support of her request, she submitted duplicates of duty status reports from Dr. Michael, which were previously received by the Office. Appellant also submitted a time analysis form for the period October 16 through 27, 2005, reflecting that she missed 32 hours of work during that time.

On April 23, 2007 appellant submitted a separate claim for compensation for 80 hours of wage loss for the period January 25 through March 4, 2006. On May 2, 2007 the Office informed appellant that the information submitted in support of her claim was insufficient, based on Dr. Arnold's reports, which indicated that appellant should have returned to full duty by the end of December 2005. It provided appellant 30 days to submit additional information or evidence.

Appellant submitted a report dated March 16, 2007 from Dr. Sparr, who noted appellant's report of a 60 percent overall decrease in pain since her last visit on November 3, 2006. Dr. Sparr diagnosed "relatively stable lumbosacral pain with intermittent radiculitis." Appellant informed Dr. Sparr that she was doing well with no pain and would like to try going on her own for a while, as she would be busy with her retirement. On April 27, 2007 Dr. Sparr reported possible mild right radiculitis and recommended additional physical therapy.

By decision dated June 29, 2007, the Office denied appellant's claim for compensation for the period January 25 through March 4, 2006. In a separate decision dated June 29, 2007, the Office denied appellant's request for merit review of its April 14, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[2] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[3]

The Federal Employees' Compensation Act[4] provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the

[2] *Curtis Hall*, 45 ECAB 316 (1994).

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[4] 5 U.S.C. §§ 8101-8193, 8123(a).

Office shall appoint a third physician who shall make an examination.[5] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[6]

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion existed regarding the nature and extent of any ongoing disability due to the work injury of December 2, 2004, based on the opinions of Dr. Michael, appellant's physician, who supported an ongoing employment-related disability, and Dr. Arnold, a second opinion physician, who opined that the employment-related disability had resolved, and that her work schedule should be increased from four to eight hours per day over a three-month period. The Office properly referred appellant to Dr. Sabin for an impartial medical examination to resolve the conflict.

In his July 20, 2006 report, Dr. Sabin provided an accurate history of injury and treatment, and indicated that he had reviewed the entire medical record. Following a thorough examination of appellant, he diagnosed cervical and lumbar strain. Dr. Sabin noted that appellant had some mild degenerative changes in the cervical and lumbar spine, which were preexisting to the accepted injury. Examination revealed normal cervical and lumbar lordosis; good range of motion in extremities, without crepitus, instability or atrophy; and good internal and external rotation of hips without pain. Cervical range of motion was normal, except for rotation to the right, which was diminished by 60 percent. Lumbar range of motion revealed increased pain with extension to 20 degrees. Dr. Sabin found pain to palpation at the L5-S1 paraspinal musculature. X-rays and MRI scan reveal no severe disc disease. The L5-S1 area was sacralized, and L4-5 appeared to be the last motion segment. Dr. Sabin opined that there was no objective reason why appellant could not work eight hours per day, and that her physical limitations were self-imposed. He stated that it was reasonable for appellant to work toward increasing her four-hour-per-day schedule (three days per week) to full time, over a two- to three-month period. In a supplemental report dated August 30, 2006, Dr. Sabin stated that there were no objective findings to support residuals of appellant's accepted conditions of cervical and lumbar strain. The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted employment-related disability had resolved by February 15, 2007. Dr. Sabin's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant but also reviewed her medical records. Dr. Sabin explained that, although x-rays and MRI scan indicated other degenerative changes in the spine, they were attributable to her preexisting conditions and not related to her accepted work injury.

As noted above, in situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on

[5] 5 U.S.C. § 8123(a); *Shirley Steib*, 46 ECAB 309, 317 (1994).

[6] *Manuel Gill*, 52 ECAB 282 (2001).

a proper factual background, must be given special weight.[7] Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.

The Board also finds that the evidence established that appellant was no longer disabled from her accepted concussion as of February 15, 2007. The Office referred appellant to Dr. Roberts, a Board-certified psychiatrist, for an examination and an opinion as to whether she had ongoing cognitive dysfunction as a result of her closed-head injury. On September 20, 2005 Dr. Roberts diagnosed mild cognitive impairment due to head trauma, and postconcussive headaches, resolving. He indicated that appellant met the standard for migraine, post-traumatic and that she had preexisting sarcoidosis. Noting that he was addressing only psychological issues, Dr. Roberts stated that appellant did not suffer from a diagnosable emotional condition which interfered with her ability to work. On October 24, 2005 appellant's psychologist, Dr. Evans, opined that appellant was able to work eight hours per day. He stated, "There are no neuron-psychological restrictions nor limitations preventing [appellant] from working eight hours a day" in her usual job. On October 28, 2005 Dr. Evans agreed with Dr. Roberts' opinion. There is no evidence of record that supports the conclusion that appellant was disabled due to her accepted concussion on February 15, 2007.

Appellant did not submit any new medical evidence sufficient to overcome the special weight accorded to the impartial medical examiner, or to create a new conflict. She provided a report dated September 5, 2006 from Dr. Sparr, who diagnosed chronic, severe lumbosacral and lower extremity pain, "which appears to be secondary to a November 30, 2004 work-related injury." However, Dr. Sparr did not express an opinion as to appellant's ability to work. Therefore, his opinion is of diminished probative value. On October 5, 2006 Dr. Sparr noted that appellant had experienced a substantial decrease in pain, and that "work restrictions are not necessary." On November 3, 2006 he indicated that appellant was 80 percent improved and experiencing minimal pain. These reports do not support appellant's claim of disability.

As the weight of the medical evidence establishes that appellant's accepted work-related disability had resolved as of February 15, 2007, the Office properly terminated appellant's wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 2

A claimant has the burden of proving by a preponderance of the evidence that she is disabled for work as a result of an accepted employment injury, and is required to submit medical evidence for each period of disability claimed.[8] Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues.[9] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[10]

[7] *Id.*

[8] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *Id.*

[10] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[11]

Section 8123(a) of the Act provides that, "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[12]

ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for concussion, cervical strain and lumbar strain. The issue on appeal is whether appellant had any disability between January 25 and March 4, 2006, causally related to her accepted condition, entitling her to wage-loss compensation. The Board finds that this case is not in posture for a decision on this issue, as there exists an unresolved conflict in medical opinion.

In her numerous reports, appellant's treating physician, Dr. Michael, expressed her opinion that appellant was unable to return to full-time employment. On August 31, 2005 she opined that appellant was able to work eight hours per day, three days per week, with restrictions. Dr. Michael noted that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed Grade 1 spondylolisthesis at L4-5, and opined that the condition was causally related to appellant's November 30, 2004 work-related injury.

On September 21, 2005 the physician for the Office, Dr. Arnold, diagnosed lumbar and cervical strain, causally related to accepted employment factors. Based on his examination, he stated that appellant had limited range of motion in her neck, and somewhat limited lumbar motion, with tenderness in these areas. Dr. Arnold stated that appellant had no significant physical limitations due to her accepted injury, although she had subjective complaints of pain and headache. He opined that her workweek should be gradually increased to 8 hours per day, 5 days per week, over a 3-month period, provided that she was restricted from lifting 15 pounds, and took a 15-minute break every hour. On September 26, 2005 Dr. Arnold stated that he had reviewed an August 22, 2005 MRI scan report subsequent to preparing his second opinion report. He noted mild cervical degenerative changes, plus lumbar spondylolisthesis at L4-5, Grade 1, with severe facet arthropathy. Dr. Arnold indicated that the MRI scan report did not provide a reason to modify his recommendation of September 21, 2005.

On January 1, 2006 Dr. Michael, based on her review of a previously diagnosed lumbar radiculopathy, recommended that appellant work from home four hours per day, five days per week. On January 9, 2006 she noted her review of an EMG report which caused her to disagree with Dr. Arnold's second opinion report, finding that appellant had increased pain in the lower back, with radiculopathy.

[11] *Fereidoon Kharabi*, *supra* note 8.

[12] 5 U.S.C. § 8123(a).

The Board finds that there is a conflict in medical opinion between Dr. Michael and Dr. Arnold as to whether appellant was partially disabled as a result of her accepted injury for the period January 25 through March 4, 2006. On the one hand, Dr. Michael opined that appellant was unable to work a full 40-hour week during the period in question. On the other hand, Dr. Arnold projected that appellant would be able to return to full-time employment by late December 2005. Section 8123 of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.[13] The case, therefore, will be remanded for an impartial medical specialist to resolve the conflict in medical opinion, and to determine which of appellant's diagnosed conditions are causally related to the July 31, 2004 employment injury. On remand, the Office should refer the case record and a statement of accepted facts to an appropriate physician pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 3

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[14] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (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.[15] Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

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.[17]

ANALYSIS -- ISSUE 3

Appellant's April 13, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

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[13] 5 U.S.C. § 8123.

[14] 20 C.F.R. § 10.608(a).

[15] 20 C.F.R. § 10.608(b)(1) and (2).

[16] 20 C.F.R. § 10.608(b).

[17] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

In support of her request for reconsideration, appellant submitted duplicates of medical reports, which were previously received by the Office. As the documents are duplicative, they do not constitute new evidence not previously considered by the Office.[18] Appellant also submitted a time analysis form for the period October 16 through 27, 2005, reflecting that she missed 32 hours of work during that time. These documents do not address the relevant issue decided by the Office on April 14, 2006, namely, whether the medical evidence established that appellant was partially disabled during the alleged period, due to the accepted employment injury. The Board finds that these documents do not constitute relevant and pertinent new evidence not previously considered by the Office.[19] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her March 14, 2007 request for reconsideration.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits effective February 15, 2007. It also finds that this case is not in posture for a decision with regard to the issue of whether appellant established that she was entitled to wage-loss compensation for intermittent periods between January 25 and March 4, 2006, as there exists an unresolved conflict in medical evidence. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2007 decision of the Office of Workers' Compensation Programs terminating appellant's compensation benefits, and the June 29, 2007 decision denying appellant's request for reconsideration, are affirmed. It is further

[18] *See Susan A. Filkins*, 57 ECAB 630 (2006).

[19] *Id.*

ordered that the Office's June 29, 2007 decision denying appellant's claim for compensation for intermittent periods between January 25 and March 4, 2006 is set aside and remanded for action in accordance with the provisions of this decision.

Issued: June 10, 2008
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