

This case is before the Board for the second time. In a decision dated April 17, 2008, the Board affirmed February 23 and August 9, 2007 decisions denying appellant's occupational disease claim, an April 24, 2007 decision denying his request for reconsideration and an

October 10, 2007 decision denying his request for a hearing.¹ The Board considered the medical evidence, including a May 24, 2007 report from Dr. Karl F. Schultz, an attending orthopedic surgeon. The Board found that Dr. Schultz' opinion that appellant's preexisting arthritis was aggravated by his work duties was insufficiently rationalized. The Board further noted that he did not provide an accurate history of appellant working only 12 weeks for the employing establishment. The Board concluded that the medical evidence was insufficient to establish that appellant sustained an aggravation of bilateral hip osteoarthritis due to factors of his federal employment. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a report dated October 15, 2008, Dr. Schultz related that he was treating appellant for bilateral hip arthritis worse on the right side. He stated, "[Appellant] had a preexisting condition that was aggravated by the work he did at the [employing establishment]."

On February 19, 2009 Dr. Schultz diagnosed degenerative joint disease of the bilateral hips. He listed findings on examination and concluded that appellant's work "carrying and delivering large quantities of mail from a shoulder bag on foot, climbing stairs and ambulating over various landscapes aggravated the disease process."

On March 25, 2009 appellant requested reconsideration of his claim. By decision dated April 13, 2009, the Office denied his request for reconsideration on the grounds that the evidence submitted was repetitious and thus insufficient to warrant further review of the merits of the case.

On appeal appellant contends that the Office should have considered the October 15, 2008 and February 19, 2009 medical reports.

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

¹ Docket No. 08-147 (issued April 17, 2008). On June 14, 2006 appellant, a former 52-year-old part-time flexible city carrier, filed an occupational disease claim alleging that he sustained advanced osteoarthritis due to factors of his federal employment. He worked from August 20 to November 12, 2006, when he was terminated during his probationary period for "insufficient work quality and quantity."

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).

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 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 April 17, 2008, the Board affirmed the Office's finding that the medical evidence was insufficient to show that appellant sustained an aggravation of bilateral hip osteoarthritis causally related to factors of his federal employment. On March 25, 2009 appellant requested reconsideration of his claim. Appellant submitted October 15, 2008 and February 19, 2009 medical reports from Dr. Schultz, his attending physician. On October 15, 2008 Dr. Schultz diagnosed bilateral arthritis of the hip right more than left. He found that appellant's duties at the employing establishment aggravated his preexisting hip arthritis. In a report dated February 19, 2009, Dr. Schultz diagnosed degenerative joint disease of the bilateral hips. He asserted that appellant's work duties of carrying and delivering mail, climbing stairs and walking aggravated his degenerative joint disease. Dr. Schultz' October 15, 2008 and February 19, 2009 reports, however, are substantially similar to his May 24, 2007 report previously considered by the Office and, consequently, are cumulative in nature and insufficient to warrant reopening the case for merit review.⁹

On appeal appellant contends that the Office should have considered the October 15, 2008 and February 19, 2009 reports from Dr. Schultz. The Office, however, after a limited review properly determined that the reports were cumulative in nature and thus did not warrant reopening the case for further merit review.¹⁰

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 submit 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.

⁵ *Id.* at § 10.608(b).

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

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 *Id.*

¹⁰ *F.R.*, 58 ECAB ____ (Docket No. 05-15, issued July 10, 2007); *Patricia Aiken*, 57 ECAB 441 (2006).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 13, 2009 is affirmed.

Issued: December 22, 2009
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