

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

lifting and pulling.” Appellant first became aware of her condition and that it was caused by her federal employment on December 19, 2005.

By decision dated January 22, 2007, the Office denied her claim because the evidence of record was insufficient to establish a causal relationship between a medically diagnosed condition and identified employment factors.

On February 8, 2007 appellant requested a hearing.

Appellant submitted additional evidence supporting her request including an August 28, 2006 note in which Dr. Glenn A. Crosby, a Board-certified neurosurgeon, reviewed appellant’s course of treatment and reported findings on examination.

A hearing was held on June 11, 2007.

By decision dated July 19, 2007, the Office hearing representative affirmed the Office’s January 22, 2007 decision.

Appellant disagreed and on July 14, 2008 requested reconsideration.

Appellant submitted a copy of Dr. Crosby’s August 28, 2006 note. In a note dated August 13, 2007, Dr. Crosby reported findings on examination and diagnosed “lumbar spondylosis with chronic back problem.”

By decision dated December 17, 2008, the Office denied appellant’s reconsideration request.

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 the evidence or argument submitted by 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

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[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.” 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

ANALYSIS

Appellant did not argue that the Office erroneously applied a point of law, nor did she advance a new legal argument not previously considered by the Office. Therefore, she was not entitled to a merit review based upon the first two enumerated grounds noted above.

Concerning the third requirement, submission of relevant and pertinent new evidence not previously considered by the Office, appellant submitted a copy of Dr. Crosby's August 28, 2006 note. This evidence was already of record and, therefore, furnishes no grounds for the Office to reopen appellant's claim for merit review.⁶

Appellant also submitted an August 13, 2007 note in which Dr. Crosby reported findings on examination and diagnosed appellant with "lumbar spondylosis with chronic back problem." Dr. Crosby furnished no opinion concerning how factors of appellant's employment caused the conditions he diagnosed. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁷ Thus, Dr. Crosby's note, though new, is not relevant and pertinent evidence requiring the Office to reopen appellant's claim for merit review.

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ *James W. Scott*, 55 ECAB 606 (2004).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board