

of the hematoma as a result of hitting his head on a truck as he entered into it. The employee experienced pain and sustained a bump on the right side of his forehead.

On July 14, 2005 appellant advised the Office that the employee died on July 9, 2005.¹ The immediate cause of death noted on the death certificate was complications due to subdural hematoma; the secondary cause was blunt impact.

By decision dated August 23, 2005, the Office denied the employee's claim, finding that the evidence failed to establish that the April 14, 2005 incident occurred at the time, place and in the manner alleged. It also found that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the alleged incident.

On August 26, 2005 appellant requested an oral hearing before an Office hearing representative. At the October 24, 2006 hearing, she contended that the factual and medical evidence established that the employee sustained a head injury causally related to the April 14, 2005 incident. An October 12, 2006 narrative statement from the employee's stepdaughter described the employee's physical condition following the April 14, 2005 incident.

By decision dated January 11, 2007, an Office hearing representative found that the evidence was insufficient to establish that the April 14, 2005 incident occurred as alleged and affirmed the August 23, 2005 decision.

On January 10, 2008 appellant requested reconsideration of the Office's January 11, 2007 decision.

In a March 21, 2008 decision, the Office denied modification of the Office hearing representative's January 11, 2007 decision, finding that the evidence failed to establish that the April 14, 2005 incident occurred as alleged.

By letter dated March 17, 2009, appellant, through counsel, requested reconsideration of the Office's March 21, 2008 decision. Counsel contended that the Office's prior decisions were issued without the benefit of live testimony from any relevant witnesses which constituted a serious procedural defect. He stated that the failure of the Office hearing representative to order such testimony precluded an opportunity to determine the credibility of conflicting statements from witnesses based on direct and cross examination, unreasonably limited the Office's ability to render a fair and just decision, denied appellant a fair opportunity to prevail and resulted in the rendering of medical opinions based on a flawed record rather than upon accepted and proven assumptions of fact. Counsel resubmitted a copy of the narrative statement from the employee's stepdaughter.

In a June 15, 2009 decision, the Office denied appellant's request for reconsideration. It found that she failed to submit any relevant and pertinent new evidence.

¹ On August 12, 2005 appellant filed a claim for compensation requesting death benefits (Form CA-5). The Board notes that the record does not contain a final decision issued by the Office on appellant's claim for survivor's benefits.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 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 meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

In a March 17, 2009 letter, appellant disagreed with the Office's March 21, 2008 decision, which denied the employee's claim on the grounds that the evidence failed to establish that the April 14, 2005 incident occurred as alleged. The relevant issue is the factual question of whether appellant has established that the claimed incident occurred as alleged.

On reconsideration, appellant contended that the Office's prior decisions denying the employee's claim were defective because she was not allowed to present testimony from any relevant witnesses. On appeal, she reiterated her contention. There is no evidence that appellant requested that witness testimony be allowed at the October 24, 2006 hearing. Her argument is not supported by any additional evidence submitted to the record. The Board finds that appellant's contention is insufficient to reopen the employee's claim for further merit review.

Appellant resubmitted the October 12, 2006 narrative statement from the employee's stepdaughter. However, the submission of this evidence does not require reopening of the employee's claim for merit review because it was previously considered by the Office. The Board has held that evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.⁵

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new medical evidence not previously considered by the Office. As

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)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ See *L.H.*, 59 ECAB ____ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.⁶

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *M.E.*, 58 ECAB 694 (2007) (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 a review on the merits).