

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA T. ALVEY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Augusta, GA

*Docket No. 03-1349; Submitted on the Record;
Issued July 28, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Appellant, a 43-year-old program clerk, filed a claim for a traumatic injury, alleging that she injured her left knee on July 1, 2001 caused by the lengthy degree of walking required by her job.

Appellant submitted treatment notes from June 25 through July 26, 2001 from Dr. Mark Thigpen, a Board-certified orthopedic surgeon, which indicated that she had been falling frequently due to the pain in her knees, and had been on limited duty. She was specifically restricted from stooping, bending and prolonged walking.

Appellant underwent left knee replacement surgery on August 5, 2001. The admission notes from the hospital indicated that she had a history of degenerative arthritis in her left knee, and that she underwent arthroscopic surgery on the left knee in August 2000.

By letter dated February 27, 2002, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment.

By decision dated May 1, 2002, the Office denied appellant's claim, finding that she failed to establish fact of injury.

By letter dated February 26, 2003, appellant's attorney requested reconsideration. Appellant did not submit any additional medical evidence.

By decision dated April 11, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on May 5, 2003, the only decision properly before the Board is the April 11, 2003 nonmerit Office decision.

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² 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.³

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Thus, her request did not contain any new and relevant evidence for the Office to review. Additionally, appellant's February 26, 2003 letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she sustained an injury in the performance of duty on July 1, 2001, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 20 C.F.R. § 10.606(b)(1). *See generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

The decision of the Office of Workers' Compensation Programs dated April 11, 2003 is hereby affirmed.

Dated, Washington, DC
July 28, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member