



her that it was not available. Appellant stated that her head and back hurt and she experienced anxiety and stress as a result of fainting after a meeting she had with a supervisor regarding this incident.<sup>1</sup> She stopped work on December 26, 1997 and returned to work on February 16, 1998. By letter dated February 23, 1998, the Office accepted her claim for a cervical strain due to an unexplained fall (fainting) to the floor on December 24, 1997.

In a March 25, 1998 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. The Office found that she failed to establish that her emotional condition was caused by compensable factors of her employment.

In a letter dated May 25, 1998, appellant requested reconsideration. On June 10, 1998 the Office issued a decision denying modification on the grounds that she failed to establish that her emotional condition was causally related to compensable factors of her employment. By letter dated January 20, 1999, appellant requested reconsideration.

On January 22, 1999 appellant filed a claim (Form CA-2a), alleging that she sustained a recurrence of disability on January 14, 1999. She stopped work on January 14, 1999 and returned to work on January 18, 1999. In a March 10, 1999 decision, the Office denied appellant's claim because she failed to establish that she was totally disabled from January 14 to 18, 1999 due to the December 24, 1997 employment injury.

In a March 19, 1999 letter, appellant requested reconsideration of the Office's March 25 and June 10, 1998 and March 10, 1999 decisions. By decision dated April 23, 1999, the Office accepted that appellant sustained an emotional condition while in the performance of duty. The Office found that she established that her emotional condition was caused by a compensable factor of her employment. The Office accepted an acute situational reaction, vasovagal syncope and a head contusion. The Office vacated the March 25 and June 10, 1998 decisions.

By decision dated May 18, 1999, the Office denied modification of its March 10, 1999 decision, finding that appellant did not establish that she was totally disabled from January 14 to 18, 1999 due to the December 24, 1997 employment injury.

On September 25, 2000 appellant filed CA-2a forms alleging that she sustained a recurrence of disability on April 3, July 17 and August 9, 2000. She stopped work on August 9, 2000. By decision dated January 16, 2001, the Office denied appellant's claims, finding the medical evidence of record insufficient to establish that her total disability on the claimed dates was causally related to the December 24, 1997 employment injuries. The Office

---

<sup>1</sup> Prior to filing the instant claim, appellant filed a traumatic injury claim on July 10, 1997 assigned claim number 09-0430458. She alleged that she experienced mental stress as a result of her supervisor, Pat Carson, shouting at her violently slammed the timecard racks. By decision dated September 2, 1997, the Office found that she failed to establish that her emotional condition was caused by compensable factors of her employment. The Office later issued decisions dated January 12 and July 6, 1998, February 16, 1999 and March 1 and July 10, 2000 denying modification. The Office also issued decisions on May 18, September 17 and December 22, 1999 which denied appellant's request for reconsideration of her claim. On May 27, 1999 the Office combined appellant's claims assigned numbers into one master case file assigned number 09-0430458.

noted that appellant should have filed an occupational disease claim because she alleged new work factors as the cause of her disability.

Appellant requested reconsideration by letters dated March 23 and April 25, 2001. The Office denied modification in a May 2, 2001 decision, finding that she did not submit rationalized medical evidence establishing that she was totally disabled on April 3, July 17 and August 9, 2000 due to the accepted December 24, 1997 employment injuries. Her subsequent May 25, June 5 and October 18, 2001 requests for reconsideration were denied by the Office on September 6, 2001 and January 15, 2002 as the medical evidence she submitted was insufficient to establish that she sustained a recurrence of disability on the claimed dates causally related to the accepted employment injuries. An undated reconsideration request was received by the Office on September 5, 2002 was denied by the Office in a decision dated November 27, 2002, on the grounds that the medical evidence submitted did not address whether she sustained a recurrence of disability on the claimed dates causally related to the accepted employment injuries.

Appellant requested reconsideration by letter dated May 13, 2003. She asked to be reimbursed for time lost from work during the period August 9, 2000 through July 30, 2001. In a July 9, 2003 decision, the Office denied her reconsideration request as the evidence submitted was irrelevant and insufficient to warrant further merit review of the claim.

By letter dated November 20, 2003, appellant, through her attorney, requested reconsideration of the Office's November 27, 2002 decision. Counsel argued that appellant had submitted sufficient medical evidence to establish that she sustained a recurrence of disability causally related to the December 24, 1997 employment injuries. Citing to Board precedent, counsel argued that, if the medical evidence submitted by appellant was not sufficiently rationalized to establish her claim, then the Office should have remanded the case for further development of the case record.

By decision dated January 26, 2004, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was irrelevant and insufficient to warrant a merit review.

On February 18, 2004 appellant appealed to the Board. By order dated August 11, 2004, the Board remanded the case to the Office for proper assemblage of the case record as the record did not contain the Office's January 26, 2004 decision.<sup>2</sup>

By letter dated September 9, 2004, the Office advised appellant that the January 26, 2004 decision would be reissued with the date of September 9, 2004 and accompanied by appeal rights. In the September 9, 2004 decision, the Office denied appellant's request for reconsideration because the evidence submitted was irrelevant and insufficient to warrant further merit review.

---

<sup>2</sup> Docket No. 04-983 (issued August 11, 2004).

## LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>3</sup> the Office 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) submit relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

## ANALYSIS

On November 20, 2003 appellant, through her attorney, requested reconsideration of the Office's November 27, 2002 decision, denying modification of its decisions which found that she did not sustain a recurrence of disability on April 3, July 17 and August 9, 2000 causally related to her December 24, 1997 employment-related cervical strain, acute situational reaction, vasovagal syncope and head contusion. Thus, the relevant underlying issue in this case is whether appellant sustained a recurrence of disability on the claimed dates due to her accepted employment injuries.

Appellant contends that she submitted sufficient medical evidence to establish that she sustained recurrences of disability causally related to the December 24, 1997 employment injuries. Her argument, however, was previously considered by the Office in its May 2 and September 6, Dr. McKinley 2001, January 15 and November 27, 2002 and July 9, 2003 decisions. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>7</sup> As such, appellant's contention is insufficient to warrant further merit review of her claim.

Appellant further contends that, if the Office determined that the medical evidence she submitted was not sufficiently rationalized to establish that she was totally disabled on April 3, July 17 and August 9, 2000 due to her December 24, 1997 employment-related injuries, the case should have been remanded to the Office for further development of the case record. Appellant's argument does not have any reasonable color of validity. It ignores the Board's precedent on establishing a claim for a recurrence of disability.<sup>8</sup> Further, the Office found in the

---

<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

<sup>8</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Ronald C. Hand*, 49 ECAB 113 (1997); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

November 27, 2002 decision, that the medical evidence submitted by appellant did not address whether she sustained a recurrence of disability on the claimed dates causally related to the accepted employment injuries. As appellant's recurrence claim was denied on the basis that she had not discharged her burden of proof in establishing that she was disabled on the claimed dates, the Board finds that her argument that the Office should have remanded the case for further development lacks a reasonable color of validity.<sup>9</sup>

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. Further, she failed to submit relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.<sup>10</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

---

<sup>9</sup> *John F. Critz*, 44 ECAB 788, 794 (1993) (finding that, while a 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).

<sup>10</sup> *See James E. Norris*, 52 ECAB 93 (2000).