

reconsideration of a hearing representative's September 24, 2002 decision affirming the Office's November 2, 2001 decision to terminate her compensation benefits.

In that case, the Board found that the arguments presented by appellant in connection with her reconsideration request dated September 22, 2003 had been considered previously and rejected by the Office. The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.¹

By letter dated November 9, 2004, appellant requested reconsideration of her claim. By decision of the same date, the Office denied appellant's request for further merit review of her claim.

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 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.⁴

ANALYSIS

In support of her November 9, 2004 reconsideration request, appellant argued that the Board in its September 27, 2004 decision incorrectly characterized her evidence as stating that she was not allowed to present a video tape of her examination with Dr. Shafer, the impartial medical examiner, when in fact she stated it was an audio tape of her examination. She further argued that the Office improperly limited the scope of the impartial medical examiner's examination to her existing condition, and that the Office improperly weighed the opinion of Dr. Shafer in terminating her compensation benefits. She also argued that the evidence of Drs. Allen and Ahmad constituted new evidence.

The Board notes that her initial argument that the Board mischaracterized her evidence would only be entertained through a petition for reconsideration to the Board. A Board decision becomes final 30 days after issuance and is not further reviewable, 20 C.F.R. § 501.6(d). Appellant's allegations that the Office improperly limited the scope of the impartial medical

¹ Docket No. 04-1092 (issued September 27, 2004).

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 20 C.F.R. § 10.608(b).

examiner's examination do not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Appellant only offered her opinion in support of these assertions and provided no new evidence to support that there was an improper examination. This unsupported assertion has no color of validity.⁵ Her argument that the evidence of Drs. Allen and Ahmed should be considered new evidence constitutes reargument of an issue previously decided. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.⁶

Appellant has not established that the Office improperly denied her request for further review of its prior merit decision under section 8128(a) of the Act, because the evidence and argument she submitted 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 constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

ORDER

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

Issued: August 2, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁵ See *Charles A. Jackson*, 53 ECAB 671 (2002).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).