

FACTUAL HISTORY

On March 2, 1992 appellant, then a 36-year-old distribution clerk, filed a traumatic injury claim alleging that she sustained a left upper extremity condition in the performance of duty. The Office accepted that appellant sustained rotator cuff tendinitis and subacromial impingement syndrome of the left shoulder. The Office authorized surgical procedures including left shoulder decompression surgery which was performed in January 1994. In August 1997, appellant filed an occupational disease claim which was accepted for bilateral carpal tunnel syndrome. The Office authorized right-sided carpal tunnel release surgery which was performed in June 1997 and left-sided carpal tunnel release surgery which was performed in July 1997. Appellant stopped work for various periods and received appropriate compensation.²

On June 13, 2001 the employing establishment offered appellant a position as a modified clerk. The position involved the dispatching of maintenance workers and appellant could sit or stand as desired while performing her duties. It did not require lifting more than five pounds or reaching above the shoulders and the operation of a desktop radio communication device only required pushing one button to contact maintenance workers. The employing establishment indicated that the physical duties of the position were within the work restrictions recommended by appellant's attending physician.³

By letter dated July 12, 2001, the Office advised appellant of its determination that the modified clerk position offered by the employing establishment was suitable.

In a letter dated August 6, 2001, appellant argued that the job offer was not valid because it was incomplete. She asserted that the job offer did not list all the restrictions related to her left shoulder injury or any of the restrictions related to her bilateral carpal tunnel syndrome. Appellant claimed that the incompleteness of the job offer made it impossible for her to tell if she could perform the position.

By letter dated August 14, 2001, the Office advised appellant that her reasons for refusing the job offered by the employing establishment were not acceptable. In a letter dated August 29, 2001, appellant again argued that the job offer was incomplete because it did not list all of her work restrictions.

By decision dated September 17, 2001, the Office terminated appellant's compensation effective that date on the grounds that she refused an offer of suitable work.

² In November 1997, the Office determined that appellant's wage-earning capacity effective January 25, 1996 was represented by the actual wages of her maintenance reactive call dispatching position for the employing establishment. The record reveals that appellant stopped work again in November 1999 and participated in vocational rehabilitation efforts.

³ The record contains a February 22, 2001 report in which Dr. George F. Smith, an attending Board-certified family practitioner, described appellant's work restrictions, including no reaching above the shoulders or lifting more than five pounds and limiting the hours she could engage in such activities as climbing and grasping. He noted that appellant could engage in nonrepetitive use of her left arm for three hours per day and nonrepetitive use of her right arm for eight hours per day.

Appellant requested an oral hearing before an Office hearing representative which was held on November 11, 2002. At the hearing appellant argued that the job offer made by the employing establishment in June 2001 was incomplete because it did not list all the restrictions related to her left shoulder or any of the restrictions related to her bilateral carpal tunnel syndrome. She contended that the job offer also failed to meet the requirement that it list all the duties of the position. Appellant indicated that the offered position seemed to be the same job that she performed for the employing establishment between 1995 and 1997 and asserted that the earlier position required more repetitive use of her hands than she could perform.

After the hearing, appellant submitted numerous documents to the Office including several personal statements, documents concerning her application for disability retirement, and documents relating to the job offered by the employing establishment, including numerous documents which were previously in the record. In a six-page statement to the Office of Personnel Management dated September 6, 2002, appellant asserted that the job offered by the employing establishment in June 2001 seemed to be the same job that she performed for the employing establishment between 1995 and 1997 and she further argued that the newly offered job could not be available because the previous job had been eliminated in 1998. In a 13-page statement dated January 8, 2003, appellant again argued that the June 2001 job offer was incomplete because it did not fully list her work restrictions or the duties of the position. She provided a detailed discussion of previous job offers she had rejected and noted that she was not penalized for refusing these offers despite the fact that they also did not fully list work restrictions and job duties. Appellant again argued that the offered position would require repetitive motion that was not allowed by her work restrictions.

By decision dated and finalized February 20, 2003, the Office hearing representative affirmed the September 17, 2001 decision. The hearing representative discussed and rejected appellant's arguments that the employing establishment's job offer was incomplete and did not adequately list her work restrictions or the duties of the position.

Appellant submitted an 18-page statement dated February 20, 2004 in which she requested reconsideration of her claim. She argued that the job offer made by the employing establishment in June 2001 was incomplete as it did not list all the restrictions related to her left shoulder and bilateral carpal tunnel syndrome and did not list all the duties of the position. Appellant indicated that she was not penalized for refusing previous job offers even though they contained deficiencies similar to those in the June 2001 offer. She argued that the position offered by the employing establishment was not available because it seemed to be the same job that she performed for the employing establishment between 1995 and 1997 and that job had been eliminated in 1998. Appellant also suggested that the offered position would require repetitive motion that was not allowed by her work restrictions and argued that an improper pay rate was used to calculate the compensation she received between 1999 and 2001.⁴

By decision dated May 24, 2004, the Office denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁴ Appellant also submitted a June 19, 2001 vocational rehabilitation report which had previously been submitted to the Office.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ 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) submit relevant and pertinent new evidence not previously considered by the Office.⁶ 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.⁷ 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.⁸

ANALYSIS

On September 17, 2001 the Office terminated appellant's compensation effective that date on the grounds that she refused a modified clerk position which was offered by the employing establishment in June 2001 and determined to be suitable by the Office in July 2001. In connection with her February 2004 reconsideration request, appellant submitted an 18-page statement in which she explained why she refused the offered position. Appellant again argued that the job offer was incomplete as it did not list all the restrictions related to her left shoulder and bilateral carpal tunnel syndrome; that it did not list all the duties of the position; that she was not penalized for refusing previous job offers with similar deficiencies; that the offered position was not actually available; and that the offered position would require repetitive motion that was not allowed by her work restrictions.

The Board notes, however, that the same arguments had previously been made by appellant on numerous other occasions. The Board has held that the submission of argument or evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ These arguments were considered and rejected by the Office in its previous decisions dated September 17, 2001 and February 20, 2003.

Prior to the termination of her compensation, appellant argued in a letter dated August 6, 2001 that the job offer made by the employing establishment was incomplete because it did not list all the restrictions related to her left shoulder injury or any of the restrictions related to her bilateral carpal tunnel syndrome. At the oral hearing before an Office hearing representative on November 11, 2002, appellant expanded upon this argument by claiming that the job offer also failed to list all the duties of the position and by asserting that the position would require more

⁵ 5 U.S.C. § 8101 *et seq.* 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).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.607(a).

⁸ 20 C.F.R. § 10.608(b).

⁹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

repetitive use of her hands than she could perform. In September 6, 2002 and January 8, 2003 statements, submitted after the hearing, appellant repeated a number of these arguments. She also claimed that the offered position was not actually available and indicated that she was not penalized for refusing prior job offers which were similarly deficient.¹⁰

In the present case, appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its February 20, 2003 decision under section 8128(a) of the Act, because she 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 submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ Appellant also argued that the an improper pay rate was used to calculate the compensation she received between 1999 and 2001, but this matter is not relevant to the issue of the present case. The Board has held that the submission of argument or evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). Appellant submitted a June 19, 2001 vocational rehabilitation report, but this report had previously been submitted to the Office.