



about a week later. The Office accepted the claim for fracture of the right second metacarpal and right rotator cuff tendinitis.<sup>1</sup> Appellant received appropriate compensation benefits.<sup>2</sup>

On September 2, 1998 appellant filed a Form CA-1 alleging that on September 1, 1998 she slipped and fell on a wet floor in the cafeteria. Appellant stopped work on that date and returned to restricted duty on September 21, 1998. The Office accepted the claim for lumbar strain and left wrist strain.<sup>3</sup> Appellant's claims were subsequently combined by the Office under claim No. 090440221.<sup>4</sup>

By letter dated September 25, 1998, the Office referred appellant to Dr. Moses Leeb, a Board-certified orthopedic surgeon, for a second opinion. In a November 7, 1998 report, Dr. Leeb noted appellant's history of injury and treatment. He provided findings upon examination, and opined that there were no objective findings to support that she had active residuals of her right shoulder, right hand, low back or left wrist conditions.

By letter dated November 17, 1998, the Office provided appellant's treating physicians, Dr. Tim Nice, a Board-certified orthopedic surgeon, and Dr. Michael A. LoPresti, a Board-certified orthopedic surgeon, with a copy of Dr. Leeb's report and requested a response.

On December 22, 1998 the Office issued a notice of proposed termination of compensation, on the basis that the weight of the medical evidence, as represented by the report of Dr. Leeb, established that her residuals of the May 4 and September 1, 1998 work injuries had ceased.

In a December 29, 1998 report, Dr. Nice noted that he had reviewed Dr. Leeb's report and concurred with Dr. Leeb's opinion, with the exception that appellant had bilateral carpal tunnel syndrome which precluded her from work.

By decision dated January 27, 1999, the Office terminated appellant's compensation benefits effective that same date, on the grounds that she had no continuing residuals of her accepted employment injuries.

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<sup>1</sup> OWCP File No. 090440221.

<sup>2</sup> The record reflects that appellant had several other prior claims. They include a June 10, 1998 claim for an occupational disease for bilateral neck and shoulder conditions which was accepted for neck strain, and bilateral shoulder strain and aggravation of bilateral carpal tunnel syndrome, with corrective surgery. She also had an emotional condition claim, which was denied. Additionally, appellant filed a traumatic injury claim for a rash due to exposure to dust mites, while handling mail on May 30, 1995, which was denied. She also filed an occupational disease on December 18, 1995 which was accepted for bilateral carpal tunnel syndrome, bilateral shoulder strains and neck strain. OWCP File No. 090421231. The Office also accepted appellant's claim for a traumatic injury claim on September 1, 1998. The Office accepted a lumbar and left wrist strain.

<sup>3</sup> OWCP File No. 090444251.

<sup>4</sup> On March 12, 2001 the Office combined File No. 090421231, 090440221 and 09044251 under File No. 09044251.

By letter dated February 20, 1999, appellant requested a hearing, which was held on July 21, 1999.

Appellant submitted additional evidence, including a June 29, 1999 report from Dr. Nice, who opined that she had chronic low back pain syndrome as well as mild chronic tenosynovitis of the left wrist with a secondary mild carpal tunnel syndrome in the left wrist. Dr. Nice also indicated that there was “every reason to believe that this was job related.”

By decision dated August 8, 1999, the Office hearing representative affirmed the January 27, 1999 decision.

By letter dated July 14, 2000, appellant requested reconsideration, and submitted a May 16, 2000 report from Dr. Leeb, who reviewed appellant’s history of injury and treatment. He noted that her accepted condition of carpal tunnel syndrome remained symptomatic, addressing symptoms in her right hand and pain over the radial palmar aspect of the right hand that radiated into the forearm. Dr. Leeb diagnosed sub-clinical median neuropathy.

By decision dated October 12, 2000, the Office denied modification of its August 8, 1999 decision.

By letter dated December 9, 2000, appellant, through her attorney, requested reconsideration and submitted additional evidence. By decision dated February 28, 2001, the Office denied modification of the October 12, 2000 decision.

By letter dated October 4, 2001, appellant requested reconsideration and submitted additional evidence, including a December 23, 2002 report from Dr. Nice who advised that appellant continued to experience residuals from her injury of May 4, 1998. By decision dated December 26, 2001, the Office denied modification of its December 9, 2000 decision.

By letter dated December 23, 2002, appellant requested reconsideration. She submitted additional reports from Dr. Nice, dated February 20, September 11 and 17, 2001, May 14, September 16 and December 23, 2002. He opined that appellant continued to experience residuals of her accepted condition. By decision dated March 17, 2003, the Office denied modification of the December 26, 2001 decision.

By letter dated February 15, 2004, appellant requested reconsideration and submitted additional medical evidence from Dr. Nice. On December 19, 2003 he advised that appellant sustained an injury to her lower back in September 1998. Dr. Nice indicated that appellant had congenital stenosis as well as discogenic disease. He noted that a recent magnetic resonance imaging (MRI) scan showed an “L5 posterior noncompression annular bulging disc that may be affecting the left neuroforamina.” Based on the physical findings, appellant’s clinical symptoms, and the MRI scan findings, appellant had lumbar spondylosis that was aggravated by the fall in 1998. He advised that appellant continued to be symptomatic intermittently.

By decision dated April 5, 2004, the Office denied modification of the March 17, 2003 decision.

By letter dated March 7, 2005, appellant requested reconsideration. She enclosed a June 1, 2004 report from Dr. Nice, who stated that she sustained an injury to her back in 1998 and that he had studied her x-rays and MRI scans to find that appellant “continued to have low back pain that I think and I have said this many times in prior letters, is related to the spondylitic changes in her back.” He noted that his prior reports had addressed that appellant sat for eight hours a day and was not accommodated until recently with a special chair for her ongoing back symptoms. Dr. Nice also stated in his “earlier letters that I felt her 1998 injury aggravated an underlying degenerative condition in her back that is further aggravated by sitting eight hours a day.” He commented that his report dated December 19, 2003 noted his belief that the lumbar spondylosis, *i.e.*, degenerative joint disease was aggravated by the fall in 1998.

By decision dated June 6, 2005, the Office denied appellant’s request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees’ Compensation Act,<sup>5</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>6</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>7</sup>

### **ANALYSIS**

In the instant case, appellant disagreed with the termination of her benefits on January 27, 1999 and requested reconsideration asserting that she continued to experience medical residuals due to her accepted injuries. The underlying issue is medical in nature, whether appellant

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b).

<sup>7</sup> 20 C.F.R. § 10.608(b).

continued to experience residuals from her accepted work-related injuries of May 4 and September 1, 1998. However, appellant did not submit relevant or pertinent new evidence as to whether she continued to have residuals due to her accepted employment-related conditions. The Office accepted that appellant sustained a right second metacarpal fracture, right rotator cuff tendinitis, a lumbar strain and left wrist strain.

Although she submitted a June 1, 2004 report from Dr. Nice, he merely repeated his previous opinions that the work injury of 1998 had aggravated appellant's underlying degenerative condition. He made reference to his prior December 19, 2003, considered by the Office in its April 5, 2004 merit decision, which addressed the causal relationship of her congenital stenosis and discogenic disease to her accepted injuries. The June 1, 2004 report is repetitious of evidence already of record and, therefore, cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> Moreover, the report is not relevant to the underlying conditions accepted by the Office in this case.

Appellant did not provide any relevant and pertinent new evidence to establish that she continued to be disabled due to her accepted employment-related conditions. Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

### CONCLUSION

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

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<sup>8</sup> See *Betty A. Butler*, 56 ECAB \_\_\_\_ (Docket No. 04-2044, issued May 16, 2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 6, 2005 is affirmed.

Issued: April 3, 2006  
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