



By decision dated September 10, 2003, the Office denied the claim. On October 7, 2003 appellant requested reconsideration. By decision dated December 12, 2003, the Office denied modification of the September 10, 2003 decision. By letter dated August 2, 2004, appellant's attorney requested reconsideration. Appellant submitted a deposition from Dr. Herbert F. Miller, Board-certified in internal medicine, who indicated that appellant's functional ability had deteriorated since a May 2002 work incident. Dr. Miller advised that appellant was in a considerable amount of pain due to his lower back condition at the time he examined him in April 2004.

In a report dated June 3, 2004, Dr. Stephen A. Montes, an osteopath, diagnosed herniated nucleus pulposus, severe spondylosis, spondylolisthesis at L4-5, severe spinal canal stenosis with decompression laminectomy, chronic lumbar myositis, L4-5 nerve root radiculopathy, failed back syndrome and clinical depression. He advised that a "specific injury" appellant sustained on May 29, 2002 was the direct cause of these diagnoses. Dr. Montes opined that appellant was not capable of performing any gainful employment on an eight-hour basis.

By decision dated August 27, 2004, the Office denied modification of its prior decisions.

On August 11, 2005 appellant's attorney requested reconsideration. Appellant submitted a September 20, 2002 report from Joan Sullivan, a physician's assistant.

By decision dated October 12, 2005, 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.

### **LEGAL PRECEDENT**

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.<sup>1</sup> 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.<sup>2</sup>

### **ANALYSIS**

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. The evidence appellant submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>3</sup> The

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<sup>1</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>2</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>3</sup> *See David J. McDonald*, 50 ECAB 185 (1998).

September 20, 2002 report from Ms. Sullivan is from a physician's assistant and therefore does not constitute medical evidence pursuant to 5 U.S.C. § 8101(2) of the Federal Employees' Compensation Act. Appellant has not submitted any new medical evidence which addresses the relevant issue of whether appellant's claimed lower back condition was causally related to factors of her federal employment. This was the sole new piece of evidence received with the request for reconsideration.

In support of the request for reconsideration, appellant's representative summarized the previously submitted reports from Drs. Miller and Montes. These reports were previously considered by the Office and are therefore cumulative and repetitive. Appellant's reconsideration request 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. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 20, 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