

reconsideration under section 8128. The Board remanded the case for consideration of the merits of the issue of whether he refused an offer of suitable work.² By decision dated October 27, 2004, the Board affirmed the Office's October 31, 2003 decision denying modification of its termination of appellant's compensation on the grounds that he refused an offer of suitable work.³ The Board further affirmed the finding that he did not establish entitlement to continuing wage-loss benefits on or after April 30, 1998. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

On February 22, 2005 appellant requested reconsideration of his claim. He argued that his superior failed to make a report after his injury as required by 5 U.S.C. §§ 8120 and 8124 and 20 C.F.R. § 10.116. Appellant also cited *Hanauer v. Reich*, 82 F.3d 1304 (4th Cir. 1996) for the proposition that the Office must consider the claim of his superior.⁴ By failing to consider this evidence, he asserted that the Office erroneously applied 20 C.F.R. § 10.125, which requires consideration of the evidence of the parties and application of statutory law, case law and regulations. Appellant further maintained that the Office failed to provide Dr. Danilo V. Domingo, a Board-certified psychiatrist and referral physician, with his statement regarding the employment factors which he alleged caused his emotional condition. He cited to 20 C.F.R. § 10.330, which lists the requirements of a medical report.

By decision dated July 6, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of his claim.

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) constitute 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

² Docket No. 02-1027 (issued May 1, 2003).

³ Docket No. 04-805 (issued October 27, 2004).

⁴ In *Hanauer*, the Court held that the Office was not required to adjudicate individual requests for lump-sum payment of benefits.

⁵ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

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).

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ While the 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.¹¹

ANALYSIS

The Board affirmed the Office's termination of appellant's compensation benefits on the grounds that he refused an offer of suitable work. In support of his reconsideration request, he indicated that his superior failed to make a report after his injury as required by statute and regulation. Appellant cited to case law, statutes and regulations for the proposition that the Office must consider evidence from all of the parties. He did not, however, specifically argue that the Office failed to consider evidence relevant to whether he could perform the position of modified clerk, the pertinent issue in this case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening for further review of the merits is not required where the legal contention does not have a reasonable color of validity.¹² Appellant's argument is not relevant to the issue in this case and thus is insufficient to warrant a reopening of his claim for a review of the merits.¹³

He further argued that Dr. Domingo was not presented with his statement of the employment factors which he alleged caused his emotional condition. The Board, however, previously found that Dr. Domingo's opinion represented the weight of the evidence regarding whether appellant had an emotional condition which would prevent him from performing the offered position of modified clerk.¹⁴ His contention, consequently, does not have a reasonable color of validity sufficient to warrant review of his claim on the merits as it is not relevant to the outcome of the case.

Appellant 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 pertinent new and relevant evidence. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

On appeal, appellant contends that Dr. Domingo falsely stated that he had a history of alcohol and substance abuse. Appellant's contentions, however, are not relevant to the issue of whether the Office properly terminated his compensation based on his refusal of suitable

⁹ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹² See *Arlesa Gibbs*, *supra* note 9.

¹³ See *Ronald A. Eldridge*, *supra* note 10.

¹⁴ See *Ronald L. McNett*, *supra* note 3.

employment and thus are insufficient to show that the Office erred in failing to reopen his case for merit review.

CONCLUSION

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

ORDER

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

Issued: March 2, 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