



order dated November 14, 2005, the Board denied this request. The law and the facts as set forth in the previous Board decisions and orders are incorporated herein by reference.

On September 27, 2005 appellant requested reconsideration before the Office, stating that his stress was caused by pain due to employment injuries. He submitted additional evidence including x-ray reports, publications, and counseling and physical therapy notes. He also submitted copies of a 2003 Equal Employment Opportunity (EEO) Commission complaint and withdrawal. By decision dated November 18, 2005, the Office denied his request for reconsideration, finding the evidence and argument submitted irrelevant. The Office noted that he could file a consequential injury claim under his previously accepted injuries.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>3</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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 Office.<sup>5</sup> Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### **ANALYSIS**

The only decision before the Board in this appeal is the decision of the Office dated November 18, 2005 denying appellant's application for review. As noted, on August 11, 2005, the Board affirmed the Office's most recent merit decision, a February 11, 2005 decision denying modification of a May 21, 2004 decision of an Office hearing representative.

In his reconsideration request, appellant contended that his stress was caused by pain from his accepted employment injuries. As noted by the Office, a claim for stress caused by pain

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.608(a).

<sup>5</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

of an accepted condition may be filed as a consequential injury under that claim.<sup>7</sup> The Board finds that there is no evidence that the Office erroneously applied or interpreted a specific point of law in rendering its decision, and appellant's contentions on reconsideration do not constitute a new argument. Consequently, appellant was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>8</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant submitted additional medical evidence, the underlying issue in this case is whether appellant established an emotional condition in the performance of duty. As appellant had not established any compensable factors of employment, the medical evidence is irrelevant. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> Furthermore, other than physical therapy notes and publications which do not constitute competent medical evidence,<sup>10</sup> the medical and EEO evidence had been previously reviewed by both the Office and the Board. The Board has long held that 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>11</sup> Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied his reconsideration request.

### CONCLUSION

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

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<sup>7</sup> When an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct. *See generally Bernitta L. Wright*, 53 ECAB 514 (2002).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2).

<sup>9</sup> *See Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>10</sup> A physical therapist is not a "physician" meaning of section 8101(2) of the Act, and cannot render a medical opinion. 5 U.S.C. § 8101(2); *see Vickey C. Randall*, 51 ECAB 357 (2000). Likewise, newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents. *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>11</sup> *James A. Castagno*, 53 ECAB 782 (2002); *Eugene F. Butler*, 36 ECAB 393 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 18, 2005 be affirmed.

Issued: May 18, 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