

the employee's estate, was entitled to wage-loss compensation from July 1, 1998 to April 18, 2002.¹ The Office issued merit decisions dated June 9 and December 23, 2003 denying the claim for compensation on the grounds that the evidence did not establish any employment-related disability for the claimed period. Appellant requested reconsideration and, in a decision dated April 9, 2004, the Office improperly denied the claim on the grounds that the employee had not claimed a specific period of wage loss during his life and, therefore, was not entitled to wage-loss compensation. The Board set aside the decision and remanded the case to the Office for a proper decision.

By decision dated May 6, 2005, the Office denied the claim for wage-loss compensation from July 1, 1998 to April 18, 2002. The Office indicated that the employee continued to work through September 15, 2001 and there was no probative medical evidence establishing disability after that date.

In a letter dated February 14, 2006, appellant requested reconsideration of the claim. She argued that the acceptance of the employee's claim for injury should include compensation from July 1, 1998 to April 18, 2002 because they were not separate reconsiderations. Appellant noted that the May 6, 2005 decision stated that the issue was whether the request for reconsideration was sufficient to modify the December 23, 2003 decision, which she argued was not consistent with the Board's instructions. She stated that terminal cancer represented total disability and the claim for wage-loss compensation should be granted. Appellant noted the costs of treatment and submitted an insurance benefit statement.

By decision dated April 5, 2006, the Office determined that appellant's application for reconsideration did not warrant merit review of the claim.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

The Office's regulation state that an application for reconsideration must be in writing and set forth arguments and contain evidence that shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent evidence not previously considered by the

¹ Docket No. 04-2245 (issued February 18, 2005).

² 5 U.S.C. § 8128(a).

Office.³ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of these three requirements, the Office will deny the application for reconsideration without reviewing the merits of the claim. 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.⁴

ANALYSIS

The underlying merit issue in this case is a claim for wage-loss compensation from July 1, 1998 to April 18, 2002, the date of the employee's death. Appellant did not submit any new and relevant evidence on this issue. The insurance statement is not relevant to the issue of the employee's employment-related disability during the period in question. Appellant, therefore, did not meet the requirement of submitting new and relevant evidence.

In addition, appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. She argued that, by accepting the employee's death as employment-related, the Office implicitly accepted that compensation for wage loss should be paid. These are separate issues and the acceptance of an employment-related condition does not establish a period of disability.⁵ Appellant also objected to the Office's reference to the December 23, 2003 decision and argued that the Office decision was not responsive to the Board's prior remand. The Board directed the Office to properly adjudicate the issues raised by appellant's February 11, 2004 request for reconsideration. The December 23, 2003 decision was not set aside and the Office considered the evidence of record in its May 6, 2005 decision as directed by the Board. Appellant did not offer a relevant argument with a reasonable color of validity in this case.⁶

The Board, therefore, finds that appellant did not meet any of the requirements of section 10.606(b)(2). Since she did not meet any of the requirements of section 10.606(b)(2), the Office properly refused to reopen the claim for merit review.

CONCLUSION

The Office properly determined that appellant's request for reconsideration was not sufficient to warrant merit review of the claim.

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁵ The Office accepted that asbestos exposure in federal employment contributed to the employee's lung cancer and death. Once an employee establishes an injury in the performance of duty, he or she still has the burden to establish a period of disability. See *Leon Thomas*, 52 ECAB 202 (2001).

⁶ Where the legal argument presented has no reasonable color of validity, the Office is not required to reopen the case for merit review; see *Norman W. Hanson*, 40 ECAB 1160 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2006 is affirmed.

Issued: October 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board