

correctional officers' week did not occur in the performance of duty.¹ It found that, although the picnic and associated basketball game took place on the employing establishment's premises, they did not occur during a lunch or recreational period as a regular incident of appellant's employment. The Board further found that the employing establishment did not expressly or implicitly require participation of employees or encourage participation through financial support. With respect to any implied requirement of participation, the Board noted appellant's assumption that his absence from the picnic would be detrimental and found that he failed to submit any evidence to corroborate that employees were required to attend. It determined that the employing establishment's involvement in the picnic such as, sending electronic mail (email) messages regarding preparations for the picnic, which included, requests for donations of gifts, money or time and furnishing basketball equipment was *de minimis* and, thus, insufficient to bring the activity within the course of employment. Lastly, the Board found that appellant failed to demonstrate that the employing establishment derived substantial direct benefit from the May 17, 2003 picnic beyond the intangible value of improvement in employee health and morale. It stated that no evidence of record suggested that the social activity in this case was in any way related to the employing establishment's business. The facts and the history of the case are set forth in the Board's prior decision and incorporated by reference.²

By letter dated July 5, 2006, appellant, through his attorney, requested reconsideration, and submitted a June 24, 2006 email message. He advised his attorney that the employing establishment told him that the itemized account of all funds utilized for correctional workers' week did not exist. Appellant stated that the employing establishment did not request that he sign a waiver to play basketball although he had to sign one to use the gym on federal grounds.

Appellant stated that the employing establishment provided support for the picnic. The employing establishment paid for utilities during correctional workers' week. Appellant reported that the staff raised money for correctional workers' week while on duty and that management also raised money by auctioning off government parking spots and days off from work. According to appellant the organizing committee met on government time and planned correctional officers' week and the employing establishment bought the equipment for the sporting events. Appellant also stated his belief that some staff were on the clock during some of the activities. Finally he contended that he was required to attend the picnic because he believed networking made a big difference in how staff were treated and who was allowed time off from work.

In a decision dated August 11, 2006, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decisions.

¹ Docket No. 05-1515 (issued January 6, 2006).

² On June 24, 2003 appellant, then a 28-year-old correctional officer, filed a traumatic injury claim, alleging that on Saturday, May 17, 2003 at 4:30 p.m., he hurt his left ring finger while playing basketball during a work picnic that was held in observance of correctional workers' week. His regular work schedule was Monday through Friday, 8:00 a.m. until 4:00 p.m.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,³ 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.⁴ 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.⁵ 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 of the merits.

ANALYSIS

By letter dated July 5, 2006, appellant disagreed with the finding that he did not sustain an injury on May 17, 2003 while in the performance of duty. The relevant underlying issue is whether the left ring finger injury appellant sustained on May 17, 2003 while playing basketball at a picnic held in observance of correctional officers' week occurred within the course of his federal employment. This was decided on the merits by the Board's decision dated January 6, 2006. See footnote 1. The letter of July 5, 2006 and the email dated June 24, 2006 are a request for a reconsideration of that decision.

In his June 24, 2006 email, appellant contended that he sustained an injury on May 17, 2003 while in the performance of duty because the employing establishment required him to participate in the picnic and it provided support and financing for the event. The Board has held that evidence or argument that repeats or duplicates evidence already in the case record and considered by the Office does not constitute a basis for further merit review.⁶ Because the Office previously considered appellant's arguments, they are repetitive in nature and insufficient to warrant further merit review.⁷

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of his request for reconsideration. Further, he 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. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.⁸

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁷ *James A. England*, 47 ECAB 115, 119 (1995).

⁸ *See James E. Norris*, 52 ECAB 93 (2000).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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