



traumatic stress disorder. Appellant was referred to vocational rehabilitation. On April 19, 2004 she began graduate training to become a mathematics and science teacher.

On August 18, 2005 appellant telephoned the Office alleging that she also hurt her right knee on November 14, 1991. She stated that it had not bothered her until recently and that she had not had medical care for her knee. By letter dated August 18, 2005, the Office informed appellant of the evidence needed to establish her claim for a right knee condition. Appellant was requested to submit medical evidence regarding complaints and treatment of her right knee since November 14, 1991.<sup>1</sup>

By decision dated October 4, 2005, the Office denied appellant's claim, finding that her right knee condition was not caused by the November 14, 1991 employment injury. Appellant began employment as a teacher on April 24, 2006.<sup>2</sup>

On September 6, 2006 appellant requested reconsideration of the October 4, 2005 decision. She submitted emergency room reports dated November 14, 1991 in which Dr. Keri B. Topouzian, a Board-certified osteopath specializing in emergency medicine, noted appellant's complaint of pain in the right leg and ankle and made physical findings of abrasions to the right and left knees with no bony deformities. An incomplete history and physical report, also dated November 14, 1991, contained a review of systems and examination findings of the skin, head, eyes, ears, nose, mouth, throat, neck and lymph nodes only. By decision dated October 30, 2006, the Office denied appellant's reconsideration request.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>3</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>4</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>5</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain

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<sup>1</sup> The Office continued to develop the claim regarding appellant's emotional condition, and on July 11, 2005 referred her to Dr. Michael H. Gotlib, a Board-certified psychiatrist, for a second opinion evaluation. Based on Dr. Gotlib's July 26, 2005 evaluation, on August 8, 2006 the Office notified appellant that it proposed to terminate compensation benefits for the accepted post-traumatic stress disorder condition on the grounds that she no longer had residuals of this condition. By decision dated September 12, 2006, the termination was finalized, effective September 13, 2006. Appellant did not file an appeal with the Board of this decision. On March 31, 2006 she filed a schedule award claim.

<sup>2</sup> The Office paid compensation based on her actual earnings. A formal wage-earning capacity decision was not issued.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.608(a).

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>6</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>7</sup>

### ANALYSIS

The only decision before the Board in this appeal is the October 30, 2006 decision of the Office denying appellant's application for review of its October 4, 2005 decision. Because more than one year had elapsed between the date of the October 4, 2005 merit decision and the filing of her appeal with the Board on December 11, 2006, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>8</sup>

With her September 6, 2006 reconsideration request, appellant contended that she had injured her right knee of November 14, 1991. She thus did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>9</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted emergency room reports and part of a history and physical dated November 14, 1991. These contained no findings relevant to her right knee condition or its relationship to the 1991 employment injury, the underlying issue to be resolved in this case. A report noted appellant's complaint of pain to the right leg and ankle, noting an abrasion of the knee. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> Thus, the medical evidence submitted is insufficient to warrant further merit review.

Appellant did not show that the Office erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by the Office. The Office properly denied her reconsideration request.<sup>11</sup>

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<sup>6</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> 20 C.F.R. § 501.3(d)(2).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>11</sup> *Id.*

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her 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 October 30, 2006 be affirmed.

Issued: September 24, 2007  
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