United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 07-894**
	)	**Issued: September 13, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Huntington Beach, CA Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2007 appellant filed a timely appeal from an April 25, 2006 merit decision of a hearing representative of the Office of Workers' Compensation Programs affirming the termination of medical benefits and finding that she was not entitled to compensation beginning June 10, 2003. She also appeals July 7 and December 20, 2006 nonmerit decisions denying her requests for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the July 7 and December 12, 2006 nonmerit decisions.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's authorization for medical benefits on the grounds that she had no further condition causally related to her February 16, 2002 employment injury; (2) whether she sustained a consequential injury on June 10, 2003 causally related to her accepted employment injury; (3) whether the Office, in its July 7, 2006 decision, properly denied appellant's request for merit review of her claim under 5 U.S.C. § 8128; and (4) whether the Office, in its December 12, 2006 decision, properly denied merit review under section 8128.

FACTUAL HISTORY

On February 16, 2002 appellant, then a 47-year-old sales associate, filed a traumatic injury claim alleging that on that date she experienced pain radiating down her back into her left leg when she shifted a box on the counter. The Office accepted her claim for lumbosacral sprain/strain. Appellant stopped work on February 19, 2002 and returned to work with restrictions on March 7, 2002.

A magnetic resonance imaging (MRI) scan study, obtained on August 28, 2002, revealed advanced degenerative disc disease at L5-S1, spondylosis with central stenosis, mild left-sided thecal sac compression and foraminal narrowing on the left and right.

On July 7, 2003 Dr. Philip Cheu, a Board-certified internist, noted that appellant experienced increased low back pain after a nonemployment-related June 10, 2003 motor vehicle accident. He diagnosed chronic low back pain aggravated by the June 10, 2003 motor vehicle accident.

In an initial evaluation dated November 11, 2003, Dr. William C. Kim, a Board-certified orthopedic surgeon, discussed appellant's history of a 1984 work injury to her back. He noted that on February 16, 2002 she "experienced severe low back pain radiating down to her left leg" after shifting a 45-pound package from one end of the counter to another. On June 10, 2003 appellant aggravated her low back pain in a nonemployment-related motor vehicle accident. Dr. Kim diagnosed left S1 radiculopathy due to a protruding disc. He stated, "It is this examiner's opinion that the industrial injury of February 16, 2002 is the cause of [appellant's] low back and left lower extremity radiculopathy although there is a motor vehicle accident. This was just an aggravation and is not [the] predominate cause for her current condition." Dr. Kim recommended further diagnostic studies, including another MRI scan study to determine whether her conditioned had worsened. He opined that appellant was totally disabled from employment for the next four weeks.

On February 25, 2004 appellant filed a recurrence of disability on June 10, 2003 causally related to her February 16, 2002 employment injury. She related that she was in a motor vehicle accident which caused increased back pain as well as pain radiating into her right and left legs. On March 29, 2004 appellant indicated that the employing establishment transferred her to another work location. She stated:

> "I complained to management that I was taking [a] strong dose of Vicodin and my doctor requested that I do not drive over 20 miles one way. Management insisted that I could pull over and rest ever 15 minutes. However, the only access to [the work location] is by freeway and I was unable to pull over to rest for safety reasons. I had to go against my doctor's orders and make the drive to [the work location] which is approximately 38 miles one way from my home. Plus, I was in prime traffic hour time and it took me approximately two hours to go to and from work. I still continued to take Vicodin during this time to relieve my back pain.
>
> "I worked at [the work location] for about two days as a window clerk. Then the car accident happened on June 10, 2003. It was when I was returning home from

> the [employing establishment] after work. I had doctor's orders not to make that drive every day[]. I was driving on the 405 freeway and had a fender bender accident. It was enough to 'jar my back' [so] that a day or so later, I started feeling pain down my right leg now. Before the pain was usually on [the] left side. Since I was coming home, [with] the stress of driving that far (38 miles one way) against my doctor's orders, I believe this is [work] related."

Appellant noted that after her motor vehicle accident the employing establishment did not allow her to resume work. She asserted that driving for long periods and her motor vehicle accident aggravated her back condition. Appellant submitted a May 30, 2003 report from Dr. Cheu, who opined that sitting for long periods while commuting would aggravate her work injury. He stated, "I do not think it would be wise to have her commute [] more than 20 minutes one way."

On April 22, 2004 the Office reopened appellant's claim for medical treatment for her accepted condition of lumbosacral strain. The Office indicated that it would further develop the issue of whether she was disabled beginning June 2003 due to her employment injury.

An MRI scan study obtained on May 14, 2004 revealed moderate to advanced facet degeneration at L3-4 and L4-5, advanced degenerative disc disease at L5-S1 endplate spondylitic ridging and a disc bulge, moderate to advanced facet degeneration at L5-S1, mild central and moderate lateral recess stenosis and moderately severe bilateral foraminal stenosis with the potential for effacement of the left L5 nerve root.

On May 20, 2004 the Office referred appellant to Dr. Joseph Pierce Conaty, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated June 14, 2004, Dr. Conaty reviewed the evidence of record, including the results of diagnostic studies, and listed findings on physical examination. Appellant related that after her February 16, 2002 work injury she returned to work with restrictions. She was subsequently transferred to a location that did not fully adhere to her restrictions and she developed increased back pain. In June 2003 she "rear-ended another car and experienced some increase in back pain and some discomfort referable to the right lower extremity. Previously, her sciatic-like complaints were in the left lower extremity." Appellant resumed modified-duty work in March 2004. Dr. Conaty diagnosed resolved lumbosacral strain and "severe long-standing degenerative disc disease, lumbosacral, with bilateral lower extremity radiculopathy." Dr. Conaty stated, "In respect to the February 16, 2002 injury, I feel that the lumbosacral strain was a direct aggravation of the preexisting degenerative changes. At the present time, there is no causal relationship in any manner to the original work injury of February 16, 2002." He opined that the temporary employment-related aggravation of her preexisting lumbosacral strain resolved around June 2002. Dr. Conaty stated, "It does not appear that there was any significant material change to alter the course of the underlying disease. Subsequent MRI scan demonstrated essentially the same findings as that noted with the original post injury MRI scan [study]." He found that appellant was totally disabled due to her employment injury from February 2002 to March 7, 2002, and partially disabled until June 2002. Dr. Conaty also opined that she was not currently disabled due to her nonemployment-related motor vehicle accident. He listed work restrictions due to appellant's lumbosacral degenerative changes.

On August 6, 2004 the Office requested that Dr. Kim review and comment on Dr. Conaty's opinion. In a report dated September 1, 2004, Dr. Kim discussed Dr. Conaty's conclusions. He noted that appellant did not report resolution of her condition in June 2002 but rather a continuation of symptoms. Dr. Kim asserted, "I would respectfully disagree with Dr. Conaty as [appellant's] history does not support she had resolution of her industrial-related low back pain." He opined that, although her MRI scan studies showed degenerative changes, "her symptoms occurred superimposed on [an] asymptomatic degenerative condition of [the] back." Dr. Kim recommended a discogram and possible decompression of the nerve root. He concluded that, notwithstanding her osteoarthritis and degenerative disc disease, if her injury had not occurred "she would not have current clinical manifestations including low back pain, radicular pain, and objective findings per MRI scan, [electromyogram] and examination."

On December 17, 2004 the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the evidence, as represented by the opinion of Dr. Conaty, showed that she had no further disability or condition due to her employment injury. The Office noted in an accompanying memorandum that it also recommended terminating medical benefits. On January 9, 2005 appellant challenged the termination of her compensation. By decision dated January 19, 2005, the Office finalized its termination of her compensation and authorization for medical benefits.

In a report dated January 11, 2005, Dr. Kim discussed appellant's history of work injuries in 1984 and February 16, 2002 injury and a motor vehicle accident on June 10, 2003. She related that the February 16, 2002 caused her back condition to worsen by 70 percent. Appellant's back condition remained 20 percent worse prior to the motor vehicle accident sustained while driving home from work. Dr. Kim stated:

> "This location is 38 miles from her home, 1½ hours drive each way. Her restriction at that time was no driving more than 20 minutes. According to [appellant] she was told by her union that she 'had' to drive further than the restricted driving time. She had no jobs available closer; therefore, the motor vehicle accident of June 10, 2003 aggravated two prior industrial injuries of 1984 and 2002."

On January 23, 2005 appellant requested an oral hearing. At the hearing, held on March 1, 2006, she related that the employing establishment erred in transferring her to a work location in excess of her driving restrictions and that the new location did not adhere to her work restrictions. Consequently, appellant took more Vicodin. Her physician advised her not to drive while taking Vicodin. Appellant did not tell the employing establishment that her doctor prohibited her from driving while taking Vicodin because she did not take the pills until she got to work in the morning. She also indicated that she had told the employing establishment that she was taking Vicodin. Appellant attributed her June 10, 2003 motor vehicle accident to taking Vicodin for pain and the long drive. She noted that she was in a lot of pain the date of the accident and took 8 to 10 pills. Appellant struck a vehicle from behind while traveling around 10 to 15 miles per hour. She subsequently experienced right leg pain and a worsening of her low back symptoms. Appellant resumed modified work in July 2004 in a location closer to her residence. She claimed compensation from June 10, 2003 to July 2004.

In a decision dated April 25, 2006, the hearing representative affirmed the January 19, 2005 decision. He found that appellant had no further residuals of her employment injury. The hearing representative further found that she was not entitled to compensation from July 10, 2003 to July 2004 as her motor vehicle accident on June 10, 2003 was not employment related.

In a report dated June 13, 2006, Dr. Kim discussed appellant's work injuries to her back in 1984, February 16, 2002 and her June 10, 2003 motor vehicle accident. He opined that the June 10, 2003 motor vehicle accident was employment related because she was under restrictions of no driving over 20 minutes and she was driving from a workstation 38 miles away. Dr. Kim asserted:

> "I am asked to respond to the question how the industrial injury of June 10, 2003 contributed to the degenerative change of her spine. My response is that as a result of the injury that she developed the new numbness and tingling. The new numbness and tingling is equal to new pressure on the nerve and irritation. This can happen when the space for the nerve is reduced and is compressed. This collapse or compression is part of the degenerative pattern of instability and disc height narrowing and neuroforaminal narrowing."

He listed work restrictions.

On June 21, 2006 appellant requested reconsideration. She again argued that the employing establishment erred in transferring her 38 miles from her residence and requested reimbursement for lost time. Appellant submitted an undated report from Dr. Cheu who discussed her history of a February 16, 2002 employment injury and subsequent June 10, 2003 motor vehicle accident. He noted that the employing establishment ignored her driving and work restrictions. Dr. Cheu concurred with Dr. Kim that appellant should not work until provided a closer work location. He opined that appellant's back condition worsened due to the motor vehicle accident as demonstrated by the second MRI scan study.

By decision dated July 7, 2006, the Office denied appellant's request for reconsideration after finding that the evidence submitted was irrelevant and thus insufficient to warrant reopening her case for merit review.

On November 5, 2006 appellant again requested reconsideration. She argued that she never recovered from a work injury in 1984 which resulted in a herniated disc. Appellant contended that subsequent to a 1984 work injury she performed heavy lifting which caused her back condition to deteriorate. The employing establishment further failed to comply with her work restrictions in transferring her to a work location 38 miles away. Appellant requested compensation for time lost after her June 2003 motor vehicle accident. She noted that it took the employing establishment 10 months to provide her with a closer work location. Appellant resubmitted an undated report and a May 30, 2003 report from Dr. Cheu and reports from Dr. Kim dated November 11, 2003, September 1 2004 and January 11, 2005. She also submitted letters she sent to the Office or the employing establishment dated March 2, 10, 26 and 29, 2004 and January 9, 2005.

In a decision dated December 20, 2006, the Office denied merit review of its April 25, 2006 decision. The Office noted that it had no history of a claim for a herniated disc in 1984.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[1] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[2]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained lumbosacral strain/sprain due to a February 16, 2002 employment injury. She stopped work on February 19, 2002 and returned to limited-duty employment on March 7, 2002. Appellant stopped work on June 10, 2003 following a motor vehicle accident.

The Office terminated appellant's authorization for medical benefits effective January 19, 2005 based on the opinion of Dr. Conaty, an Office referral physician.[3] In a report dated June 14, 2004, Dr. Conaty reviewed the medical evidence, discussed appellant's current complaints and listed detailed findings on physical examination. He opined that the accepted condition of lumbosacral strain had resolved and that any further disability was due to her lumbosacral degenerative disc disease with radiculopathy. Dr. Conaty found that appellant's February 16, 2002 injury aggravated her preexisting degenerative changes but that the aggravation ceased approximately June 2002. He explained that there was not a material change in her condition as demonstrated by later MRI scan studies, which showed "essentially the same findings as that noted with the original post injury MRI [scan] [study]." The Board finds that Dr. Conaty's report is rationalized and based on a complete and accurate history; consequently, his opinion is sufficient to represent the weight of the medical evidence on the issue of whether appellant has any further residuals of her lumbosacral strain/sprain.

In a report dated September 1, 2004, Dr. Kim disagreed with Dr. Conaty's finding that appellant's employment injury had resolved given her continued symptoms. He opined that based on a review of the MRI scan studies her symptoms were "superimposed on [an] asymptomatic degenerative condition" and that without her employment injury "she would not have current clinical manifestations including low back pain, radicular pain, and objective findings per MRI scan, [electromyogram] and examination." The Board has held that an opinion that a condition is causally related to an employment injury because the employee was

[1] *Pamela K. Guesford*, 53 ECAB 727 (2002).

[2] *Id*.

[3] The Board notes that the Office, in its January 19, 2005 decision, indicated that it was terminating appellant's compensation as well as entitlement to medical treatment. As the Office was not paying her compensation at the time she stopped work on June 10, 2003, it improperly characterized the issue as termination of compensation. As the Office was paying medical benefits, it properly adjudicated the issue of whether she had residuals of her employment injury entitling her to further medical treatment.

asymptomatic before the incident but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[4] Dr. Kim did not provide further rationale for his finding that appellant's continued symptoms were due to her employment injury; consequently, his report is of diminished probative value. The Office thus met its burden of proof to terminate appellant's authorization for medical benefits based on its finding that the opinion of Dr. Conaty represented the weight of the evidence and established that she had no residual condition due to her accepted condition of lumbosacral strain/sprain.

Following the termination of medical benefits, appellant submitted a January 11, 2005 report from Dr. Kim who noted that appellant asserted that her back condition remained 20 percent worse due to her February 2002 employment injury before the June 2003 motor vehicle accident. Dr. Kim did not, however, render an independent finding that appellant required further treatment due to her February 16, 2002 employment injury but rather noted her perception of her condition. A physician's report is of little probative value when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.[5] Dr. Kim's January 11, 2005 report, therefore, is insufficient to show that appellant required further medical treatment due to her work injury.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[6]

Regarding the range of compensable consequences of an employment injury, *Larson* notes that, when the question is whether compensation should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of "direct and natural results" and of the claimant's own conduct as an independent intervening case. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[7]

It is accepted that once the work-related character of a condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in

[4] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *Earl David Seal*, 49 ECAB 152 (1997).

[6] *Mary Poller*, 55 ECAB 483 (2004).

[7] 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 10.01 at page 10-2 (2004).

the circumstances.[8] An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.[9]

ANALYSIS -- ISSUE 2

On February 25, 2004 appellant filed a notice of recurrence of disability on June 10, 2003 due to her February 16, 2002 motor vehicle accident. A recurrence of disability is defined as "an inability to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[10] It appears from appellant's statements that her claim is for a consequential injury resulting from her February 16, 2002 employment injury. She attributed her June 10, 2003 motor vehicle accident to the employing establishment wrongly transferring her to a work location 38 miles away when her physician did not want her driving over 20 miles. Appellant also alleged that management at the new work location required her to work outside her restrictions. She contended that the extensive driving and working outside her restrictions aggravated her back pain and consequently she took more Vicodin to manage the pain. Appellant maintained that the Vicodin affected her ability to drive which resulted in the June 10, 2003 motor vehicle accident.

Once the work-related character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.[11] On June 10, 2003 appellant was in a nonemployment-related motor vehicle accident on her way home from work. She stopped work and requested compensation. The issue is whether her disability from June 10, 2003 to July 2004 is compensable as the "direct and natural" result of the February 16, 2002 employment injury. Applying the principles noted above, the Board finds that the triggering episode for appellant's disability was the June 10, 2003 motor vehicle accident and not the "natural progression" of her back condition. While appellant alleged that the Vicodin that she took to control pain from her employment injury caused her motor vehicle accident, she has not submitted any medical evidence supporting her allegation that using a prescription drug for pain caused her motor vehicle accident. In support of her claim that she sustained a consequential injury, she submitted a report date January 11, 2005 from Dr. Kim.[12] In a report dated January 11, 2005, Dr. Kim

[8] *See Robert W. Meeson*, 44 ECAB 834 (1993) (the Board held that an intervening injury broke the chain of causation when the employee's automobile struck a deer in a nonemployment-related accident).

[9] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[10] 20 C.F.R. § 10.5(x).

[11] *See Kathy A. Kelley*, *supra* note 9.

[12] In a report dated November 11, 2003, Dr. Kim attributed appellant's low back and left lower extremity radiculopathy to her February 16, 2002 employment injury and found that the motor vehicle accident was an aggravation of that condition. He found that appellant was totally disabled. Dr. Kim, however, did not address the relationship between the aggravation of her back due to the motor vehicle accident and his disability finding.

noted that appellant was under work restrictions of no driving over 20 minutes. The employing establishment transferred her to a location 38 miles from her residence. Dr. Kim consequently found that the "motor vehicle accident of June 10, 2003 aggravated two prior industrial injuries of 1984 and 2002." However, he did not explain how appellant's June 10, 2003 motor vehicle accident was the direct and natural result of her accepted employment injury. A mere conclusion without supporting rationale is insufficient to meet a claimant's burden of proof.[13] The Board, consequently, finds that appellant did not meet her burden of proof to establish that she sustained a consequential injury on June 10, 2003.

LEGAL PRECEDENT -- ISSUES 3 & 4

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[14] 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.[15] 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.[16] 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.[17]

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.[18] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[19] 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.[20]

ANALYSIS -- ISSUE 3

On June 21, 2006 appellant requested reconsideration of the denial of her claim for compensation from June 10, 2003 to July 2004. She argued that the employing establishment erred in transferring her to a work location 38 miles from her home. The Office, however,

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[13] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[14] 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."

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.607(a).

[17] 20 C.F.R. § 10.608(b).

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

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

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

previously addressed this argument. The Board has held that evidence or argument that repeats or duplicates that already considered by the Office does not constitute a basis for reopening a claim.[21]

Appellant submitted a report dated June 13, 2006 from Dr. Kim who discussed appellant's history of employment injuries on 1984 and February 16, 2002 and summarized her condition following the injuries. Dr. Kim opined that appellant's motor vehicle accident was due to her employment because the employing establishment violated her 20-minute driving restrictions by transferring her to a work location 38 miles away. He explained how appellant's motor vehicle accident worsened degenerative disease in her spine. This report, however, is cumulative in nature as it is substantially similar to his June 11, 2005 report previously considered by the Office. Thus, Dr. Kim's June 13, 2006 report is insufficient to warrant reopening appellant's case for a review of the merits.[22]

In an undated report, Dr. Cheu discussed appellant's February 16, 2002 employment injury and June 10, 2003 motor vehicle accident. He noted that the employing establishment did not adhere to her driving restrictions and agreed that she should not work until transferred to a location closer to her home. Dr. Cheu did not address either the issue of whether she required further medical treatment due to her employment injury or whether the motor vehicle accident was the natural result of the employment injury. Evidence which does not address the particular issue involved does not constitute a basis for reopening a claim.[23]

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 constitute pertinent new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

ANALYSIS -- ISSUE 4

Appellant again requested reconsideration on November 5, 2006. She noted that she sustained a herniated disc due to a 1984 work injury and that heavy lifting during the course of her employment caused her back condition to deteriorate. Her contention that her back worsened due to a 1984 work injury and heavy lifting during the course of her federal employment is not relevant to the pertinent issues of whether she has further residuals of her February 16, 2002 work injury or whether her disability beginning June 2003 occurred as a consequence of that employment injury.[24] Appellant additionally contended that the employing establishment did not comply with her restrictions when it transferred her to a work location 38 miles away; however,

[21] *J.P.*, 58 ECAB ___ (Docket No. 06-1274, issued January 29, 2007).

[22] *Patricia G. Aiken*, 57 ECAB ___ (Docket No. 06-75, issued February 17, 2006).

[23] *Johnnie B. Causey*, 57 ECAB ___ (Docket No. 06-49, issued February 7, 2006).

[24] If appellant believes that factors of her federal employment over the course of more than on work shift caused an injury to her back she can file an occupational disease claim. *See* 20 C.F.R. § 10.5(q).

the Office previously considered this argument and thus it is not sufficient to warrant reopening her claim for merit review.[25]

With her reconsideration request, appellant resubmitted an undated report and a May 30, 2003 report from Dr. Cheu and November 11, 2003, September 1, 2004 and January 11, 2005 reports from Dr. Kim. She also resubmitted letters she sent to the Office or the employing establishment dated March 2, 10, 26 and 29, 2004 and January 9, 2005. As this evidence duplicated evidence already in the case record, it has no evidentiary value.[26]

As noted above, 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 not previously considered. Thus, the Office properly denied her request for review of the merits of her claim.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's authorization for medical benefits on the grounds that she had no further condition causally related to her February 16, 2002 employment injury. The Board further finds that she did not sustain a consequential injury on June 10, 2003 causally related to her accepted employment injury. The Board finds that the Office, in its July 7 and December 12, 2006 decisions, properly denied appellant's requests for merit review of her claim under 5 U.S.C. § 8128.

[25] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[26] *Richard Yadron*, 57 ECAB ___ (Docket No. 05-1738, issued November 8, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 20 and July 7 and April 25, 2006 are affirmed.

Issued: September 13, 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