



In an April 29, 2004 emergency room report, Dr. George L. Hertner, Board-certified in emergency medicine, noted that appellant was exposed to gasoline fumes when the gas line was cut in his employing establishment vehicle. He conducted a physical examination and determined that appellant's carbon monoxide level was about 3.5, which was normal for someone who drove a truck for a living. Dr. Hertner advised that appellant was initially placed on a "nonrebreather" until it was determined that he had not had any carbon monoxide exposure. He opined that appellant "had a noxious fume exposure." However, Dr. Hertner did not recommend further diagnostic studies or testing and indicated that appellant was asymptomatic at the time of his discussion with appellant. In a separate report, also dated April 29, 2004, he diagnosed acute noxious fume exposure and discharged appellant. A separate emergency room report, dated April 29, 2004, from Dr. Steven K. Brodie, a Board-certified internist, also diagnosed noxious fume exposure.

The Office also received an April 29, 2004 chest x-ray, read by Dr. Stephen Hughes, a Board-certified radiologist, as normal diagnostic reports and laboratory results. An April 29, 2004 report from the emergency response team indicated that they were dispatched as appellant was light headed and dizzy due to exposure to gasoline fumes.

On September 16, 2005 the Office advised appellant that his claim was originally received as a simple uncontroverted case, which resulted in minimal or no lost time from work. Appellant was advised that his medical bills had exceeded \$1,500.00 dollars and the Office would formally adjudicate his claim. The Office informed appellant of the type of evidence needed to support his claim. It subsequently received an August 31, 2005 x-ray of the left third finger, which contained findings of a mildly displaced fracture of the tuft of the third distal phalanx.

By decision dated October 20, 2005, the Office denied appellant's claim. It found that the claimed exposure occurred as alleged but there was no medical evidence which provided a diagnosis which could be connected to the accepted incident.

On September 7, 2006 appellant requested reconsideration. The Office subsequently received an October 10, 2005 attending physician's report from Dr. Hertner who noted that appellant was exposed to gas and diagnosed with noxious fume exposure. The Office also received copies of previously received reports.

By decision dated December 19, 2006, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain

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<sup>1</sup> 5 U.S.C. § 8128(a).

review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

- “(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>2</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>3</sup>

### ANALYSIS

Appellant disagreed with the denial of his traumatic injury claim and requested reconsideration on September 7, 2006. In support of his claim, appellant submitted copies of previously submitted reports. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup>

He also submitted a report related to his finger; however, this report is not relevant to the underlying issue of his claim for exposure to fumes. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup> Appellant provided a report from Dr. Hertner dated October 10, 2005. While this report was new, Dr. Hertner merely repeated the findings listed in his April 29, 2004 reports. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.<sup>6</sup>

Appellant does not make any argument that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office.

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<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> 20 C.F.R. § 10.608(b).

<sup>4</sup> *J.P.*, 58 ECAB \_\_\_\_ (Docket No. 06-1274, issued January 29, 2007).

<sup>5</sup> *P.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-1954, issued March 6, 2007); *J.P.*, *id.*

<sup>6</sup> *Betty A. Butler*, 56 ECAB \_\_\_\_ (Docket No. 04-2044, issued May 16, 2005); *Daniel M. Dupor*, 51 ECAB 482 (2000).

As appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered or submitted relevant and pertinent new evidence, the Office, in its December 19, 2006 decision, properly refused to reopen appellant's claim for a review on the merits.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs December 19, 2006 is affirmed.

Issued: September 19, 2007  
Washington, DC

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

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