

rear door of a long-life vehicle while trying to step in to arrange mail. By letter dated April 26, 1999, the Office accepted appellant's claim for cervical strain.

On September 23, 2004 appellant filed a claim alleging that he sustained a recurrence of disability in September 2004.

By decision dated December 3, 2004, the Office denied appellant's claim. It found that he did not submit any medical evidence establishing that he sustained a recurrence of disability causally related to his November 17, 1998 employment-related injury.

On December 15, 2004 appellant requested a review of the written record by an Office hearing representative. In a November 19, 2004 medical report, Dr. Marco P. Dirks, an attending Board-certified orthopedic surgeon, found that appellant's symptoms of numbness and tingling in September 2004 were directly related to his November 17, 1998 employment injury.

In a decision dated April 12, 2005, a hearing representative affirmed the December 3, 2004 decision. He found the evidence of record insufficient to establish that appellant sustained a recurrence of disability in September 2004 causally related to his accepted November 17, 1998 employment injury.

Dr. Dirks subsequently submitted reports dated January 13, February 11, March 17, April 8 and May 6, 1999, October 14, 2004 and September 26, 2005. He found that appellant's cervical radiculitis was resolving and that he had carpal tunnel syndrome. The Office also received a duplicate copy of Dr. Dirks' November 19, 2004 report.

A September 28, 2005 magnetic resonance imaging (MRI) scan report of Dr. Stephen Karshbaum, a Board-certified radiologist, demonstrated straightening of the usual cervical lordosis and narrowing of the cervical spinal canal at various levels. An October 25, 2005 report of Dr. David J. Cicerchia, a Board-certified orthopedic surgeon, found that appellant had cervical spinal stenosis and cervical spondylosis. He found no myelopathy.

On October 2, 2006 appellant advised the Office that he filed another "appeal" regarding the April 12, 2005 decision and a return receipt stated that it was received by the Office on March 14, 2006.

By letter dated October 11, 2006, appellant stated that he was resubmitting his request for reconsideration because his original request had been apparently lost. He submitted a copy of the return receipt which indicated that his reconsideration request was received by the Office on March 14, 2006. Dr. Dirks' form report dated May 6, 1999 found that both appellant's right carpal tunnel syndrome and cervical radiculitis were resolving.

In a decision dated January 9, 2007, the Office treated appellant's request for reconsideration as timely filed based on the March 14, 2006 return receipt. The Office, however, denied his request on the grounds that it neither included new and relevant evidence nor showed that the Office erroneously applied or interpreted a specific point of law and thus, insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹ the Office regulation provides 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.² 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.³ 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

On March 14, 2006 appellant disagreed with the Office hearing representative's April 12, 2005 decision, affirming the finding that he did not sustain a recurrence of disability beginning in September 2004 causally related to his November 17, 1998 employment-related cervical strain. The underlying issue in this case is whether he has established that his recurrence of disability during the claimed period was due to his accepted employment-related condition. This issue is medical in nature.

Appellant submitted duplicate copies of Dr. Dirks' reports dated January 13, February 11, March 17, April 8 and May 6, 1999, which found that he had cervical radiculitis and carpal tunnel syndrome that were subsequently resolving. A duplicate copy of Dr. Dirks' November 19, 2004 report found that appellant's symptoms of numbness and tingling in September 2004 were directly related to his November 17, 1998 employment-related injury. Dr. Dirks' October 14, 2004 and September 26, 2005 reports reiterated his prior finding that appellant sustained cervical radiculitis. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁴ Dr. Dirks' reports covering the period January 13 to May 6, 1999 and dated November 19, 2004 were already of record and considered by the Office. His October 14, 2004 and September 26, 2005 reports merely included a diagnosis that repeated evidence already of record. The Board finds that Dr. Dirks' reports are insufficient to warrant reopening appellant's claim for further merit review.

Dr. Karshbaum's September 28, 2005 MRI scan report demonstrated straightening of the usual cervical lordosis and narrowing of the cervical spinal canal at various levels. Dr. Cicerchia's October 25, 2005 report found that appellant had cervical spinal stenosis and cervical spondylosis. This evidence fails to address whether appellant sustained a recurrence of

¹ 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).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

⁴ See *Patricia G. Aiken*, 57 ECAB ____ (Docket No. 06-75, issued February 17, 2006).

disability in September 2004 causally related to his accepted employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ Because neither Dr. Karshbaum nor Dr. Cicerchia addressed the relevant issue in this case, their reports are insufficient to warrant reopening appellant's claim for further merit review.⁶

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.⁷

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).

⁵ *Mark H. Dever*, 53 ECAB 710 (2002).

⁶ *Id.*

⁷ *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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