

surgeon, who performed an impartial medical evaluation. The Board further found that appellant failed to establish that she had any disability after April 20, 1994 causally related to her employment injury.¹ On December 15, 1998 appellant, through counsel, filed a petition for reconsideration with the Board. By order dated November 16, 1999, the Board denied the petition. Appellant requested reconsideration with the Office and, in a decision dated April 21, 2003, the Board affirmed Office decisions of September 10, 2001 and March 20, 2002 which found that she had no employment-related disability after December 6, 1995.² By decision dated March 9, 2005, the Board found that appellant did not establish that she had disability after December 6, 1995 due to the December 3, 1991 employment injury, and affirmed a June 14, 2004 Office decision.³ The law and the facts as set forth in the previous Board decisions are incorporated herein by reference.

On January 17, 2006 appellant requested reconsideration and submitted reports dated August 10, 2004 and December 16, 2005 from Dr. Daphne G. Golding, an attending Board-certified physiatrist, and a November 17, 2006 report from Timothy Richter, a licensed social worker. In a merit decision dated May 2, 2006, the Office denied modification of the prior decisions. On May 15, 2006 appellant again requested reconsideration, and submitted an April 11, 2005 report of a left ankle x-ray and electromyography (EMG) studies of the upper and lower extremities dated May 17 and 19, 2005. By decision dated August 23, 2006, the Office again denied modification of the prior decisions.

On October 2, 2006 appellant requested reconsideration and submitted duplicate copies of evidence previously of record.⁴ In an October 30, 2006 decision, the Office denied appellant's reconsideration request. Appellant again requested reconsideration on August 22, 2007, and submitted additional medical evidence including office notes and magnetic resonance imaging (MRI) scan studies dating from April 28, 1983 to January 25, 1995, reports from Dr. Golding dated December 6, 2001 to December 16, 2005, Mr. Richter's January 17, 2006 report, the May 2005 EMG reports, a September 16, 1999 MRI scan of the lumbar spine, and an October 29, 2001 report from Dr. Daniel S. Carrodorini, a chiropractor. She also submitted a January 13, 1995 newspaper article and information regarding a fonar MRI scan.

By decision dated November 16, 2007, the Office denied appellant's reconsideration request.

¹ Docket No. 96-2610 (issued December 10, 1998).

² Docket No. 02-1620 (issued April 21, 2003).

³ Docket No. 04-2062 (issued March 9, 2005).

⁴ This evidence consisted of the May 2005 EMG studies, Dr. Golding's December 16, 2005 report, and treatment notes dated May 14 through July 30, 1992 from a Dr. Gregory Nelson.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁵ 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.⁶ 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).⁷ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain 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.⁸ 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.⁹

ANALYSIS

The only decision before the Board is the November 16, 2007 decision of the Office denying appellant's August 22, 2007 application for review. Because more than one year elapsed between the date of the Office's most recent merit decision in this case, dated August 23, 2006, and the filing of her appeal with the Board on February 19, 2008, the Board lacks jurisdiction to review the merits of appellant's claim.¹⁰

With her August 22, 2007 reconsideration request, appellant argued that modern medical technology, especially a fonar MRI scan, would prove her claim and establish that she was totally disabled due to her employment injuries. Appellant's general argument that she was disabled due to her employment injuries has previously been addressed in the numerous Office and Board decisions. Argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ Appellant's contention that modern technology would prove her claim does not constitute the type of evidence or argument requiring review of her claim on the merits. Furthermore, while a 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.¹² Appellant did

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Id.* at § 8128(a).

⁷ 20 C.F.R. § 10.608(a).

⁸ *Id.* at § 10.608(b)(1) and (2).

⁹ *Id.* at § 10.608(b).

¹⁰ *Id.* at § 501.3(d)(2).

¹¹ *M.E.*, 58 ECAB ____ (Docket No. 07-1189, issued September 20, 2007).

¹² *Elaine M. Borghini*, 57 ECAB 549 (2006).

not 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).¹³

With respect to the third above-noted requirement under section 10.606(b)(2), the merit issue in this case is whether appellant has established that she has any continuing disability causally related to her December 3, 1991 employment injury. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ Appellant submitted a newspaper article and information regarding a fonar MRI scan. Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents and are therefore insufficient to warrant merit review.¹⁵ Appellant also submitted reports from Dr. Golding dated December 6, 2001 to December 16, 2005, Mr. Richter's January 17, 2006 report, the May 2005 EMG reports, a September 16, 1999 MRI scan of the lumbar spine, and an October 29, 2001 report from Dr. Daniel S. Carrodorini, a chiropractor. Each of these reports, were previously of record and reviewed by the Office. Evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁶ Appellant therefore did not submit any evidence that would warrant merit review.

As 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.¹⁷

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).

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁵ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ *Freddie Mosley*, 54 ECAB 255 (2002).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2007 be affirmed.

Issued: December 1, 2008
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