

On October 20, 2003 the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the incident occurred as alleged and that there was no evidence of a diagnosis connected to the claimed event.

On October 18, 2004 appellant requested reconsideration.

On February 18, 2005 the Office denied modification of the October 20, 2003 decision, finding that he did not establish that the injury occurred as alleged.

On February 14, 2006 appellant requested reconsideration. He submitted additional medical information with his request including copies of previously submitted progress notes. In a letter dated July 13, 2004, Dr. James Lewis, a neurologist, stated that he had last examined appellant approximately a year prior and that appellant had a lesion in his spinal cord producing Brown-Sequard syndrome. In a February 6, 2006 letter, Dr. Lewis opined: "within the usual limits of medical probability" that appellant's work activities caused his current medical condition. Dr. Lewis stated that he had not seen appellant before his problems began and "was not there to witness the inciting events."

In a nonmerit decision dated March 9, 2006, the Office denied appellant's request for reconsideration on the basis that it did not support that the March 3, 2003 injury occurred as alleged.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.² When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.³

ANALYSIS

The Office issued a decision on March 9, 2006, denying reconsideration of its February 18, 2005 decision on the grounds that the evidence submitted was insufficient to warrant further merit review. The Board must determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to appellant's application for reconsideration and any

¹ 20 C.F.R. § 10.606(b)(2) (2003).

² *Id.* at 10.608(b) (2003).

³ *Annette Louise*, 54 ECAB 783 (2003).

evidence submitted in support thereof. Appellant has not shown that the Office erroneously applied or interpreted a specific point of law nor did he advance a relevant legal argument. He submitted evidence in support of his request for reconsideration, however, this evidence was not relevant and pertinent new evidence. The evidence submitted included duplicates of previously submitted medical reports. The Board has held that evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a claim for merit review.⁴ As the Office had previously reviewed this evidence, the resubmission did not require the Office to reopen the claim.

Appellant also submitted two new medical reports from Dr. Lewis which had not been previously reviewed by the Office. However, neither of the reports provide any history of the March 8, 2003 incident and are not relevant to whether the alleged incident occurred. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵

CONCLUSION

The Board finds that the Office properly denied merit review on March 9, 2006 as appellant did not submit new and relevant evidence in support of his request for reconsideration.

⁴ *James R. Bell*, 52 ECAB 414 (2001).

⁵ *Robert Mitchell*, 52 ECAB 116 (2000).

ORDER

IT IS HEREBY ORDERED THAT March 9, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2008
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