



just recently returned to her regular duties following a February 5, 2000 employment-related cervical sprain (xxxxxx857).<sup>2</sup> Appellant performed her unrestricted letter carrier duties for a full day on June 21, 2006 and for approximately 6½ hours on June 22, 2006 before stopping work. She claimed that carrying a mailbag around her neck aggravated her preexisting cervical condition.<sup>3</sup> After further development of the record, the Office denied appellant's claim by decision dated September 19, 2006. It found that there was no medical evidence linking her cervical condition to her June 21 and 22, 2006 employment duties.

By decision dated June 25, 2007, the Branch of Hearings and Review affirmed the Office's September 19, 2006 decision. Appellant requested reconsideration on November 17, 2007. Along with the request, she resubmitted a May 17, 2007 medical report. The Office denied reconsideration in a decision dated December 13, 2007; however, it used an incorrect OWCP claim number, xxxxxx583, on its December 13, 2007 decision. Counsel brought this error to the Office's attention on December 25, 2007. Several days later, appellant submitted an October 9, 2007 cervical magnetic resonance imaging (MRI) scan and a November 2, 2007 functional capacity evaluation.

On June 22, 2008 counsel filed a second request for reconsideration of the hearing representative's June 25, 2007 decision. He commented about the incorrect OWCP claim number on the Office's December 13, 2007 decision. Counsel also submitted a copy of a Dr. Robert M. Hess' May 15, 2007 medical report, which he had already submitted on two prior occasions.

In a decision dated July 3, 2008, the Office denied appellant's request for reconsideration.

### **LEGAL PRECEDENT**

The Office has the discretion to reopen a case for review on the merits.<sup>4</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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>5</sup> When an application for reconsideration 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.<sup>6</sup>

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<sup>2</sup> Effective June 9, 2006, the Office terminated compensation and medical benefits under claim number xxxxxx857. Appellant also had cervical degenerative disc disease (C5-6); however, the Office had not accepted this particular condition as being causally related to the February 5, 2000 employment injury.

<sup>3</sup> Appellant said she first became aware of her cervical disc disease on December 10, 2001.

<sup>4</sup> 5 U.S.C. § 8128(a) (2006).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2) (2008).

<sup>6</sup> *Id.* at § 10.608(b).

### ANALYSIS

Appellant's June 22, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, it did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is 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).<sup>7</sup> She also failed to satisfy the third requirement under section 10.606(b)(2). Appellant did not submit any relevant and pertinent new evidence with her June 22, 2008 request for reconsideration. The record already included at least two copies of Dr. Hess' May 15, 2007 report, which the Office hearing representative discussed at length in his June 25, 2007 decision. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>8</sup> In addition to Dr. Hess' report, the Office received a recent cervical MRI scan and a functional capacity evaluation.<sup>9</sup> Although this latter evidence is new to the record, it does not address the essential issue on reconsideration, which is whether there is a causal relationship between appellant's current cervical condition and her June 21 and 22, 2006 employment duties. As such, the newly submitted evidence is neither relevant nor pertinent to the issue on reconsideration. Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).<sup>10</sup>

### CONCLUSION

The Board finds that the Office properly denied appellant's June 22, 2008 request for reconsideration.

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<sup>7</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii).

<sup>8</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

<sup>9</sup> The Board notes that the November 2, 2007 functional capacity evaluation was not prepared by a physician, but by a physical therapist. *See* 5 U.S.C. § 8101(2).

<sup>10</sup> 20 C.F.R. § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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