



## **FACTUAL HISTORY**

This case is before the Board for the third time. By decision dated June 1, 2000, the Board affirmed in part and reversed in part a January 12, 1998 decision terminating appellant's compensation benefits for the accepted conditions of left ankle sprain, a contusion of the right knee and lumbosacral sprain.<sup>1</sup> The Board found that the Office met its burden of proof to establish that she had no further disability due to her left ankle sprain and right knee contusion. However, the Office did not meet its burden of proof to terminate compensation for the appellant's lumbosacral strain due to an unresolved conflict in medical opinion. The Board directed the Office to further develop the issue of whether her authorized November 2, 1989 arthroscopic knee surgery caused or contributed to any right lower extremity impairment or disability for employment. The Board found that appellant had not established that she had any other diagnosed conditions causally related to her June 26, 1989 work injury. In a July 31, 2001 decision, the Board reversed the termination of appellant's compensation benefits for the accepted condition of lumbosacral strain.<sup>2</sup> The Board found that the opinion of the impartial medical examiner was insufficient to resolve the conflict in medical opinion. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

The Office paid appellant compensation for disability from March 5, 1995 through August 31, 1996, April 1 through August 11, 1997 and August 21, 1997 through October 6, 2001. Appellant returned to limited-duty employment on October 6, 2001. On July 12, 2004 the Office granted her a schedule award for a 13 percent permanent impairment of the right lower extremity. On August 5, 2005 a hearing representative vacated the July 12, 2004 decision after finding a conflict in medical opinion between Dr. David Weiss, an attending osteopath Board-certified in family practice, and the Office medical adviser. The hearing representative instructed the Office to refer appellant for another impartial medical examination on the issue of the extent of any permanent right lower extremity impairment and whether she had a back condition affecting her lower extremity impairment.

On October 12, 2005 the Office referred appellant to Dr. Christopher M. Aland, a Board-certified orthopedic surgeon, for an impartial medical examination. On November 16, 2005 Dr. Aland opined that appellant had a 17 percent permanent whole person impairment due to nonemployment-related degenerative arthritis of the knee and a 10 percent whole person impairment due to radiculopathy from the lumbar spine. In response to the Office's request for clarification, he found that appellant had a 24 percent permanent impairment of the lower extremity. On February 15, 2006 an Office medical adviser reviewed Dr. Aland's report and found that it was insufficient to establish the extent of her permanent impairment as he did not reference or properly apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

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<sup>1</sup> Docket No. 98-1471 (issued June 1, 2000). The Office accepted that on June 26, 1989 appellant sustained lumbosacral strain, a left ankle sprain and a contusion to the right knee when she fell on a sidewalk. Appellant underwent arthroscopic surgery on November 2, 1989, which showed early degenerative joint disease of the right medial femoral epicondyle and plica synovialis.

<sup>2</sup> Docket No. 02-1885 (issued July 31, 2001).

On November 7, 2006 appellant filed a recurrence of disability claim on March 10, 2003 causally related to her June 26, 1989 work injury.

In a report dated November 11, 2006, Dr. Arnold S. Lincow, an attending osteopath, diagnosed an aggravation of internal derangement of the right knee with chondromalacia, an aggravation of a torn right anterior cruciate ligament (ACL), meniscus degeneration and status post failed right knee surgery, myofascial pain syndrome with reflex sympathetic dystrophy, type 2, an aggravation of a herniated nucleus pulposus at L4 to S1 with radiculopathy progressive to L5-S1, chronic lumbosacral strain, ambulatory dysfunction and a progression of traumatic arthritis of the knee and lumbar spine. He stated:

“It is my professional opinion, based upon a reasonable degree of medical certainty that [appellant’s] injuries are directly and causally related to her severe trauma which occurred on June 26, 1989 and due to a reagravation injury which took place on or around the year 2003 in the month March. [Appellant] is not capable of doing any gainful employment. This is based on my most recent examination of [her] on November 7, 2006 with her multiple objective findings which correlate with her chief complaints, review of diagnostic studies and use of the [A.M.A., *Guides*]. [Appellant’s] condition has deteriorated over the last, almost 18 years.”

On November 15, 2006 the Office referred appellant to Dr. John T. Williams, Sr., a Board-certified orthopedic surgeon, to resolve the conflict as to the extent of appellant’s right leg impairment.<sup>3</sup> It requested that Dr. Williams address whether she had any further work-related disability and whether she was disabled from work beginning March 11, 2003 due to her employment injury. In a report dated December 19, 2006, Dr. Williams diagnosed a resolved acute left ankle sprain, resolved acute bilateral knee contusions and sprains and a resolved acute lumbosacral sprain/strain. On examination, he noted complaints of pain but no evidence of muscle spasms and a negative Moses, Homans and Oppenheim’s tests. Dr. Williams opined that appellant’s physical complaints were not supported by any positive objective findings. He noted that the November 3, 1989 arthroscopic surgery revealed no mensical tear but found plica, a nonemployment-related condition. Dr. Williams stated:

[Appellant] has been treated for her back in the face of a normal MRI [magnetic resonance imaging] [scan] of her spine. [She] has been treated for her knee with the absence of any positive objective findings on physical examination or on the imaging studies to correlate. The swelling in [appellant’s] knee is secondary to degenerative changes, wear and tear and breaking off pieces of the articular cartilage, which is due to wear and tear, causing irritation of the synovium, causing her to have a swollen joint. But there is no evidence of any pathology referable to [her] left ankle, left knee, right knee or her back referable to the incident of June 26, 1989.”

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<sup>3</sup> A copy of the November 15, 2006 letter was sent to appellant’s representative advising of the examination scheduled for December 19, 2006.

Dr. Williams opined that appellant had no disability or residual impairment due to her June 26, 1989 work injury. He found that she sustained soft-tissue injuries that had resolved and that her current complaints were due to the aging degenerative process. Dr. Williams concluded that appellant was not disabled beginning March 11, 2003 due to the accepted work injury. He explained that the diagnostic studies revealed degenerative changes unrelated to her June 26, 1989 injury. Dr. Williams asserted that appellant had no impairment due to a loss of range of motion, decreased strength, atrophy, ankylosis, sensory changes or other factors. He stated that her condition was her “aging process over the past 17 years and her degenerative process.” Dr. Williams opined that the plica resection was not causally related to the June 26, 1989 injury. He concluded, “[Appellant] has multiple complaints and the bone scan shows that she has uptake changes that are due to degeneration, not to trauma.... To summarize, I have stated that [she] incurred soft tissue injuries that self resolved and though [she] has complaints, with reference to the incident, there are no positive objective findings.” Dr. Williams listed work restrictions which he attributed to appellant’s deconditioning.

On January 22, 2007 the Office requested that Dr. Williams review and discuss a right knee MRI scan dated November 10, 2006 and Dr. Lincow’s November 11, 2006 report. In a February 13, 2007 addendum, Dr. Williams reviewed the additional medical evidence and stated:

“After reviewing these documents. I do not see anything here to alter my opinion as previously stated in the body of my report. To summarize again, [appellant] may have in fact incurred what are considered to be soft tissue injuries, *i.e.*, sprains and strains of her lumbosacral area. Sprains and strains are self-resolving injuries, which self-resolve anywhere from a few days to a couple of months. With reference to [her] knee, [she] had a scoping of her right knee and the surgeon found no evidence of any tears or ligamentous disruption, only some plica. Plica is a growth that is not caused by trauma.

“[Appellant], with reference, to her spine, had some evidence of degenerative changes involving her spine via her [computerized tomography] imaging study. Degenerative changes preexisted. They may have been aggravated by the sprain and strain, but in my opinion that aggravation would be of a temporary transitory nature, resolving and leaving [her] with her preexisting pathology.”

By decision dated March 2, 2007, the Office denied appellant’s claim for an increased schedule award and found that she did not establish an employment-related recurrence of disability beginning March 11, 2003.

On March 5, 2007 appellant’s attorney requested an oral hearing. Following a preliminary review of the record, the hearing representative set aside the March 2, 2007 decision. He found that the Office should further develop the issue of whether appellant had any impairment or disability due to her November 2, 1989 right knee surgery. The hearing representative noted that Dr. Williams found that the plica resection performed was not employment related but did not specifically address whether she had any disability or impairment due to the authorized surgery. He further determined that Dr. Williams’ opinion established that appellant had no further residuals of her accepted lumbosacral strain.

On June 12, 2007 the Office notified appellant that it proposed to terminate her compensation and medical benefits for her accepted lumbosacral strain.<sup>4</sup>

In an addendum dated July 24, 2007, Dr. Williams acknowledged that the Office approved the November 2, 1989 right knee surgery.<sup>5</sup> He stated that his opinion was unchanged, reiterating that at the time of surgery there was no evidence of any meniscal tear and that plica was anatomical variant not caused by the 1989 injury or causing any ligamentous instability.

By decision dated August 14, 2007, the Office finalized its termination of appellant's compensation and medical benefits effective August 14, 2007. It also denied her claim for an increased schedule award and found that she did not establish a recurrence of disability beginning March 11, 2003.

In an addendum dated August 7, 2007, received by the Office on August 22, 2007, Dr. Williams opined that at the time of appellant's surgery there was no evidence of a meniscal tear. He opined that the November 2, 1989 arthroscopy caused no right leg impairment or disability from employment. Dr. Williams stated, "The rationale is that the operating surgeon himself states that he saw no evidence of any meniscal tears or ligamentous instability. The only thing he saw was this plica," which was an anatomical finding. Dr. Williams opined that appellant's surgery did not result in any disability from employment beginning November 2003. He asserted that the surgery "documented that there was no evidence of any disruption of ligamentous structures. [Appellant] may have had a mild sprain or strain of the knee and that would resolve in a few weeks to a couple of months at most."

On August 16, 2007 appellant, through her attorney, requested an oral hearing. A hearing was held on December 11, 2007.

By decision dated March 5, 2008, the Office hearing representative affirmed the August 14, 2007 decision. She found that the opinion of Dr. Williams, the impartial medical examiner, constituted the weight of the evidence.

On May 19, 2008 appellant, through her attorney, requested reconsideration. He submitted the results of MRI scan studies of the right knee and lumbar spine dated 2004 to 2007.

By decision dated August 14, 2008, the Office denied reconsideration on the grounds that the evidence submitted was duplicative and insufficient to warrant reopening the claim for further merit review.

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<sup>4</sup> On June 12, 2007 appellant's attorney requested participation in the selection of the impartial medical examiner. By letter dated June 19, 2007, the Office informed him that it was obtaining clarification from Dr. Williams. On June 26, 2007 the attorney questioned whether Dr. Williams was aware that the Office approved appellant's right knee surgery and that he did not reference the A.M.A., *Guides*.

<sup>5</sup> A July 27, 2007 MRI scan of the lumbosacral spine revealed minimal disc desiccation with Schmorl's nodes at L1/2 and L2/3 and "a hint of disc desiccation at the L4-5 disc with a shallow broad herniation, more so into the left L4-5 neural foramen. This may well affect the left L4 nerve root within the neural foramen and the left L5 nerve root in the lateral aspect of the canal. There is facet hypertrophy at L4-5." An MRI scan of the left ankle revealed "soft tissue edema along the dorsum of the foot." An MRI scan of the right knee showed "prominent soft tissue edema anterior to the patella and patellar tendon."

### LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>8</sup> The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>9</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained left ankle sprain, a right knee contusion and lumbosacral strain due to her January 26, 1989 work injury. On June 1, 2000 the Board affirmed the Office's termination of her compensation for the left ankle sprain and right knee contusions. The Board found, however, that an unresolved conflict existed regarding whether appellant had continuing disability from her lumbosacral strain. The Board also directed the Office to develop whether her approved November 2, 1989 arthroscopic surgery resulted in any right lower extremity impairment or disability. In a decision dated May 28, 2003, the Board again found an unresolved conflict regarding whether appellant had ongoing disability due to her lumbosacral strain. On November 15, 2006 the Office referred her to Dr. Williams to resolve a conflict in opinion on the extent of her injury-related impairment and whether she had any further work-related disability.

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual

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<sup>6</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>7</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> 20 C.F.R. § 10.321.

<sup>10</sup> *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

background, must be given special weight.<sup>11</sup> The Board finds that the opinion of Dr. Williams, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history.

Dr. Williams accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.<sup>12</sup> In a report dated December 19, 2006, he reviewed the medical evidence of record, including the results of diagnostic studies. On examination, Dr. Williams found that appellant's subjective complaints were unsupported by positive objective findings on examination. He asserted that she sustained soft-tissue injuries due to the accepted work injury that resolved and attributed her current complaints to aging and a degenerative process. Dr. Williams provided rationale for his opinion by noting that the diagnostic studies showed degenerative changes unrelated to her June 26, 1989 work injury. He opined that the work injury may have temporarily aggravated her lumbar sprain but found that the aggravation would have resolved. Dr. Williams further determined that appellant had no disability due to her right knee surgery. He noted that the surgery showed plica, an anatomical finding unrelated to her accepted work injury. As Dr. Williams' report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.<sup>13</sup> The Office met its proof to terminate appellant's compensation benefits for the accepted condition of lumbosacral strain.

On appeal, appellant's attorney now contends that Dr. Williams was not properly selected using the Physician's Directory System. Counsel, however, did not timely raise any objection to the selection of Dr. Williams as the impartial medical examiner.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>15</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>13</sup> *J.J.*, 60 ECAB \_\_\_\_ (Docket No. 09-27, issued February 10, 2009); *B.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1457, issued February 2, 2009).

<sup>14</sup> *See L.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1346, issued April 23, 2008).

<sup>15</sup> *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>16</sup> *Id.*

## **ANALYSIS -- ISSUE 2**

The Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Williams, the impartial medical examiner, who found that appellant had no residuals of her accepted condition of lumbosacral strain or from her right knee surgery. Dr. Williams explained that appellant sustained soft tissue injuries at the time of her work injury that had resolved. As his opinion is detailed and well rationalized, it is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has no further residuals of her accepted employment injury.<sup>17</sup>

## **LEGAL PRECEDENT -- ISSUE 3**

The Federal Employees' Compensation Act<sup>18</sup> provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>19</sup> In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.<sup>20</sup>

As a claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, it is thus the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>21</sup> The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury.<sup>22</sup> The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>23</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> 5 U.S.C. §§ 8101-8193.

<sup>19</sup> *Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>20</sup> *Renee M. Straubinger*, 51 ECAB 667 (2000).

<sup>21</sup> *See Veronica Williams*, 56 ECAB 367 (2005).

<sup>22</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>23</sup> *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

### **ANALYSIS -- ISSUE 3**

The Office determined that a conflict in medical opinion existed between Dr. Weiss and the Office medical examiner on the issue of the extent of appellant's permanent impairment of the right lower extremity. It referred appellant to Dr. Aland to resolve the conflict. In a report dated November 16, 2005, Dr. Aland found that appellant had a 17 percent whole person impairment due to nonemployment-related arthritis of the knee and a 10 percent whole person impairment due to lumbar spine radiculopathy. Responding to the Office's request for clarification, he opined that appellant had a 24 percent permanent impairment of the right lower extremity. On February 15, 2006 an Office medical adviser found that Dr. Aland's report was insufficient to resolve the issue of the extent of her permanent impairment as he did not explain his calculations with reference to the A.M.A., *Guides*.

The Office referred appellant to Dr. Williams to resolve the conflict regarding the issue of the extent of her right lower extremity impairment.<sup>24</sup> On December 19, 2006 Dr. Williams found that she had no impairment due to her accepted work injury. He determined that appellant's injuries had resolved and noted that her surgery found only plica, a nonwork-related condition and resulted in no right leg impairment. Dr. Williams further opined that she had no impairment due to a loss of range of motion, decreased strength, atrophy, ankylosis, sensory changes or other factors. His report is thorough and entitled to the weight of the evidence and established that appellant is not entitled to an increased schedule award for the right lower extremity,

On appeal, appellant's attorney argues that Dr. Williams found appellant's right knee surgery was not authorized by the Office; however, in his July 24, 2007 report, he acknowledged that the Office authorized the surgery but found that it resulted in no impairment. Counsel also contends that Dr. Williams failed to properly consider the objective tests. Dr. Williams, however, reviewed in detail the diagnostic tests but found that appellant had no impairment due to her work injury.

### **LEGAL PRECEDENT -- ISSUE 4**

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the

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<sup>24</sup> As the Office had previously requested clarification from Dr. Aland, it was appropriate to refer appellant for another examination. In situations where it secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on his or her opinion, the case should be referred to another appropriate impartial medical specialist. *See Guiseppa Aversa*, 55 ECAB 164 (2003).

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>25</sup>

Office regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>26</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>27</sup>

#### **ANALYSIS -- ISSUE 4**

After sustaining intermittent periods of total disability following her work injury, appellant returned to limited-duty employment on October 6, 2001. She stopped work on March 10, 2003 and filed a recurrence of disability claim due to her June 26, 1989 work injury. Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must thus provide medical evidence establishing that she was disabled due to a worsening of her accepted work injury.<sup>28</sup>

In a report dated November 11, 2006, Dr. Lincow diagnosed an aggravation of internal derangement of the right knee with chondromalacia, an aggravation of a torn right ACL, meniscus degeneration and status post failed right knee surgery, myofascial pain syndrome with reflex sympathetic dystrophy, type 2, an aggravation of a herniated nucleus pulposus at L4 to S1 with radiculopathy progressive to L5-S1, chronic lumbosacral strain, ambulatory dysfunction and a progression of traumatic arthritis of the knee and lumbar spine. He found that appellant's injuries were due her work injury on June 26, 1989 and a reaggravation in March 2003. Dr. Lincow opined that appellant was disabled from employment. The Office, however, only accepted lumbosacral strain as employment related. Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>29</sup> Dr. Lincow did not provide any rationale for his

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<sup>25</sup> *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>26</sup> 20 C.F.R. § 10.5(x).

<sup>27</sup> *Id.*

<sup>28</sup> *See Jackie D. West*, *supra* note 25.

<sup>29</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

opinion that the work injury resulted in other conditions. Medical conclusions unsupported by rationale are of little probative value.<sup>30</sup>

Further, Dr. Williams provided a second opinion on the issue of whether appellant sustained a recurrence of disability beginning March 10, 2003. He asserted that she was not disabled starting March 11, 2003 due to her work injury and explained that she had degenerative changes unrelated to her work injury. Appellant, consequently, has not met her burden of proof to establish that she sustained an employment-related recurrence of disability beginning March 11, 2003.

### **LEGAL PRECEDENT -- ISSUE 5**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>31</sup> the Office's regulations provide 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.<sup>32</sup> 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.<sup>33</sup> 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 on the merits.<sup>34</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>35</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>36</sup> While the 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.<sup>37</sup>

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<sup>30</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

<sup>31</sup> *Supra* note 18. Section 8128(a) of the Act provides that "[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."

<sup>32</sup> 20 C.F.R. § 10.606(b)(2).

<sup>33</sup> *Id.* at § 10.607(a).

<sup>34</sup> *Id.* at § 10.608(b).

<sup>35</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>36</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>37</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

### **ANALYSIS -- ISSUE 5**

By decision dated March 5, 2008, a hearing representative affirmed the Office's termination of appellant's compensation and authorization for medical treatment, its denial of her claim for an increased schedule award and its finding that she did not sustain an employment-related recurrence of disability. On reconsideration appellant's attorney resubmitted the results of MRI scan studies of the lumbar spine and right knee dated 2004 to 2007. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>38</sup>

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits and authorization for medical treatment effective August 14, 2007 on the grounds that she had no further employment-related disability. The Board further finds that she has not established that she is entitled to an increased schedule award of the right lower extremity or that she sustained an employment-related recurrence of disability beginning March 10, 2003. The Board additionally finds that the Office properly denied appellant's request for further review of the merits of her claim under 5 U.S.C. § 8128.

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<sup>38</sup> *Richard Yadron*, 57 ECAB 207 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 14 and March 5, 2008 are affirmed.

Issued: December 18, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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