



File No. xxxxxx514. The Board remanded the case for reconstruction of the record.<sup>1</sup> The findings of fact and conclusions of law from the order are hereby incorporated by reference.

On remand of the case, the Office reviewed evidence submitted after the October 23, 2002 decision.

Appellant applied for disability retirement benefits through the Office of Personnel Management (OPM) on February 19, 2002. She accepted a light-duty job offer on February 28, 2002 but did not clock in or perform work.<sup>2</sup> In undated letters, a union official, two coworkers and appellant's husband stated that on February 28, 2002, appellant's supervisor, human resources officials and other personnel instructed her to accept the light-duty job offer but not to clock in or she would negate the disability retirement calculations that had already been completed. Appellant was instructed to turn in her badge and clean out her locker as her retirement application was accepted and she was no longer an employee.

In periodic reports from August 2001 to August 2005, Dr. Champ L. Baker, Jr., an attending Board-certified orthopedic surgeon, diagnosed right lateral epicondylitis at maximum medical improvement as of February 28, 2002. He released appellant to limited duty. In a January 18, 2002 report, Dr. Leland C. McCluskey, an attending Board-certified orthopedic surgeon, released appellant to full duty regarding the accepted right ankle injury. From April to July 2003, appellant was also followed by Dr. William F. Sims, an attending Board-certified orthopedic surgeon.<sup>3</sup>

By decision dated September 23, 2005, the Office affirmed the October 23, 2002 termination of appellant's compensation benefits. It found that, while appellant may have been misinformed about "clocking in," she did not commence work on February 28, 2002 as required to continue eligibility for compensation benefits. The Office noted that the medical evidence and other documents were irrelevant to the claim.

In a September 15, 2006 letter, appellant requested reconsideration. She asserted that the employing establishment erred by offering her a light-duty position outside her bidden craft. Appellant submitted copies of federal personnel regulations, medical billing forms dated from May to August 2006, and May and July 2006 chart notes from Dr. Baker.

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<sup>1</sup> Docket No. 08-2408 (issued June 10, 2005). The Office accepted that on February 9, 1998 appellant, then a 44-year-old clerk, sustained a right elbow injury. Appellant elected disability retirement benefits effective January 6, 2002. On February 28, 2002 she accepted a modified clerk job offer from the employing establishment. Appellant reported to the employing establishment on February 28, 2002, accepted the job offer, but did not clock in or perform work. On March 15, 2002 she claimed a schedule award for impairment of the right arm. The Office advised her by March 28, 2002 letter that the offered position was suitable work and of the Act's penalty provisions for refusing the offer. It terminated appellant's compensation by October 23, 2002 decision.

<sup>2</sup> Appellant also submitted copies of light-duty job offers she accepted between March 10, 1998 and November 1, 2001.

<sup>3</sup> Appellant also provided a copy of the Board's decision in *Max Yates*, Docket No. 96-2207 (issued September 16, 1998), medical billing forms, personnel forms and physical therapy notes dated from 2003 to 2005.

By decision dated October 13, 2006, the Office denied reconsideration on the grounds that the evidence submitted was either cumulative or irrelevant.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>4</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations 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.<sup>5</sup> 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.<sup>6</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>7</sup> A claimant need only submit relevant, pertinent evidence not previously considered by the Office.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a right elbow injury on February 9, 1998, for which she received medical benefits and compensation for partial disability. In February 2002, appellant elected disability retirement benefits. On February 28, 2002 appellant accepted a light-duty job offer but did not clock in or perform work. Therefore, in an October 23, 2002 decision, the Office terminated appellant's compensation benefits under section 8106(c) of the Act<sup>10</sup> as she refused an offer of suitable work. It affirmed the termination by a September 23, 2005 decision, finding that the evidence supported that appellant refused an offer of suitable work.

Appellant requested reconsideration on September 15, 2006. She asserted that regulations unrelated to the Act established that the February 28, 2002 job offer was erroneous. Appellant also submitted billing forms and medical records. These documents are irrelevant to

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<sup>4</sup> 5 U.S.C. § 8128(a).

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

<sup>6</sup> *Id.* at § 10.608(b). *See also T.E.*, 59 ECAB \_\_\_\_ (Docket No. 07-2227, issued March 19, 2008).

<sup>7</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>8</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>9</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>10</sup> 5 U.S.C. § 8106(c).

her claim. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.<sup>11</sup>

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act. She 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 relevant and pertinent new evidence not previously considered by the Office.

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 13, 2006 is affirmed.

Issued: June 8, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>11</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).