



employment, he wrote: “See attachments.” However, no attachment was submitted with appellant’s claim form. The employing establishment controverted the claim. By decision dated September 6, 2007, the Office denied appellant’s claim, finding that he did not establish that he sustained an injury as alleged. It noted that appellant had not provided a clear statement regarding the factual basis of his claim.

On May 29, 2008 appellant requested reconsideration. He submitted evidence which included numerous documents conceiving his grievances with the employing establishment, evidence with regard to his prior job assignments and duties, reports of “security problem or poor financial practice” signed by appellant and evidence pertaining to his prior claims. In a physician’s report dated March 14, 2008, Dr. Luis E. Favra-Clavell indicated that appellant had chronic radiculopathy, a disc bulge at L3-4 and L4-5 and lordosis, which he attributed to a May 18, 2007 employment incident.

By decision dated July 15, 2008, the Office denied appellant’s request for reconsideration because the arguments and/or evidence submitted in support of the request was not sufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,<sup>1</sup> the Office regulations provide that the evidence or argument submitted by 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>2</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>3</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>4</sup>

### **ANALYSIS**

In the September 6, 2007 decision, the Office denied appellant’s claim, noting that he failed to provide a clear statement regarding the factual basis of his claim. In support of his request for reconsideration, appellant submitted evidence including documents regarding prior grievances, reports of security problems and medical evidence. However, this evidence is not relevant as it fails to address the reason that his claim was denied. Appellant did not provide a statement with regard to the employment factors alleged to have caused or contributed to his

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

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

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> 20 C.F.R. § 10.608(b).

condition. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup> Appellant did not contend that the Office erroneously applied a point of law or make a new relevant legal argument not previously considered. Accordingly, the Office properly denied further consideration of appellant's case on the merits.<sup>6</sup>

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 15, 2008 is affirmed.

Issued: March 3, 2009  
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

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<sup>5</sup> *D.K.*, 59 ECAB \_\_\_\_ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>6</sup> *C.N.*, 60 ECAB \_\_\_\_ (Docket No. 08-1569, issued December 9, 2008).