

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

H.D., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,  
CARL VINSON VETERANS  
ADMINISTRATION MEDICAL CENTER,  
Dublin, GA, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 09-438  
Issued: September 15, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 1, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 2 and October 7, 2008 that denied further merit review. Because more than one year has elapsed between the most recent merit decision dated October 1, 2007 and the filing of this appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that the Office did not consider the evidence submitted with her reconsideration requests and that the evidence established her claim.

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated October 1, 2007, the Board found that appellant did not meet her burden of proof to establish that she sustained an employment-related injury on November 3, 2005 and that the Office did not abuse its discretion in denying her subpoena requests.<sup>1</sup> The law and the facts of the previous Board decision are incorporated herein by reference.

On July 28, 2008 appellant requested reconsideration arguing that the Board erred in denying her claim, that the Office failed to provide notice under section 8106(c)<sup>2</sup> of the Federal Employees' Compensation Act and improperly withdrew light duty, that the medical evidence of record established that her claim and her subpoena requests were improperly denied. She submitted evidence previously of record and an October 1, 2005 report from Dr. Mokhtar Hacena, a Board-certified internist. By decision dated September 2, 2008, the Office denied appellant's reconsideration request.

Appellant again requested reconsideration on September 22, 2008, reiterating her previous arguments and alleging that the employing establishment improperly placed her in absence-without-leave (AWOL) status. She submitted a January 27, 2006 statement in which James Hampton of the employing establishment testified regarding her Equal Employment Opportunity Commission claim, a March 19, 2006 prehearing submission from the employing establishment regarding her claim of improper removal before the Merit Systems Protection Board (MSPB) and an MSPB decision dated May 24, 2007, finding in the employing establishment's favor. In an October 7, 2008 decision, the Office again denied appellant's request for reconsideration.

## **LEGAL PRECEDENT**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>3</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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> Section 10.608(b) provides that, when a

---

<sup>1</sup> Docket No. 07-1026 (issued October 1, 2007). Appellant alleged an allergic reaction to environmental chemicals at work on November 3, 2005.

<sup>2</sup> 5 U.S.C. § 8106(c).

<sup>3</sup> *Id.* at § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.608(a).

<sup>5</sup> *Id.* at § 10.608(b)(1) and (2).

request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### ANALYSIS

The only decisions before the Board in this appeal are the nonmerit Office decisions dated September 2 and October 7, 2008 denying appellant's applications for review. Because more than one year elapsed between the dates of the most recent merit decision in this case, the Board's October 1, 2007 decision and the filing of her appeal on December 1, 2008, the Board lacks jurisdiction to review the merits of her claim.<sup>7</sup>

Appellant's July 28, 2008 reconsideration request contended that the Board erred in denying her claim. The Office, however, is without authority to review a decision of the Board.<sup>8</sup> Appellant further argued that the Office failed to provide notice under section 8106(c) of the Act and that she sustained a recurrence of disability; thus, her light duty was improperly withdrawn. The underlying issue in this case was whether appellant met her burden of proof to establish that she sustained an allergic reaction on November 3, 2005. Therefore, section 8106(c) which pertains to the refusal of suitable work is not relevant to the denial of appellant's claim. Moreover, the Office did not adjudicate appellant's claim and recurrence of disability. This argument is not relevant to establishing an allergic reaction on November 3, 2005. Appellant also argued that her subpoenas were improperly denied. The Board previously found that the Office did not abuse its discretion in denying appellant's subpoena requests.<sup>9</sup> With appellant's September 22, 2008 reconsideration request, she reiterated her previous arguments and contended that she was improperly placed on AWOL status. Again, this argument is not relevant to the merit issue in this case, whether she established that she sustained an allergic reaction on November 5, 2005.

Appellant generally argued that the medical evidence of record was sufficient to establish her claim. Arguments that repeat those previously of record have no evidentiary value and do not constitute a basis for reopening a case.<sup>10</sup> While a 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>11</sup> Appellant did not demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. Consequently, she is not entitled to a review of the

---

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> 20 C.F.R. § 501.3(d)(2).

<sup>8</sup> *Theresa Johnson*, 50 ECAB 317 (1999).

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *M.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-1189, issued September 20, 2007).

<sup>11</sup> *Elaine M. Borghini*, 57 ECAB 549 (2006).

merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>12</sup>

Appellant submitted duplicate copies of evidence previously of record that were reviewed by the Board and the Office. Evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>13</sup> The newly submitted medical evidence consisted of an October 1, 2005 report from Dr. Hacena. This report, however, discussed appellant's medical condition on October 1, 2005, prior to the claimed injury of November 3, 2005 and is not relevant to her condition on that date. The Office and Board previously reviewed a June 15, 2006 report in which Dr. Hacena discussed appellant's condition. The October 1, 2005 report is therefore irrelevant.<sup>14</sup> Appellant also submitted the employing establishment's prehearing submission dated March 19, 2006 for her claim that she was improperly removed before the MSPB, and an MSPB decision dated May 24, 2007. The determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability under the Act.<sup>15</sup> Furthermore, the MSPB affirmed the employing establishment's removal.

Appellant did not show that the Office erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered. The Office properly denied appellant's reconsideration requests.<sup>16</sup>

Finally, regarding appellant's arguments on appeal, the Board finds that the Office, in its September 2 and October 7, 2008 decisions thoroughly discussed the arguments and evidence submitted by her.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).<sup>17</sup>

---

<sup>12</sup> 20 C.F.R. § 10.606(b)(2).

<sup>13</sup> *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>14</sup> 20 C.F.R. § 10.608(b)(1) and (2); *C.N.*, 60 ECAB \_\_\_\_ (Docket No. 08-1569, issued December 9, 2008).

<sup>15</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>16</sup> *Supra* note 6.

<sup>17</sup> The Board notes that appellant filed an occupational disease claim that the Office is adjudicating separately.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 7 and September 2, 2008 be affirmed.

Issued: September 15, 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