

FACTUAL HISTORY

This case has been before the Board on two prior occasions. By decision dated May 5, 2008, the Board found that the medical evidence of record was insufficient to establish that appellant sustained an employment-related back condition in November 2006. It affirmed an October 2, 2007 Office decision denying the claim.² In a February 18, 2009 decision, the Board affirmed a September 3, 2008 merit decision of the Office. The Board reviewed a June 19, 2008 report from Dr. Martin Fritzhand, a Board-certified urologist, and found that appellant did not establish that she sustained an employment-related back condition in November 2006.³ The facts are set forth in the previous Board decisions and are incorporated herein by reference.

On March 15, 2009 appellant, through her attorney, requested reconsideration and resubmitted Dr. Fritzhand's June 19, 2008 report. In a nonmerit decision dated April 6, 2009, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ 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.⁵ 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).⁶ 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.⁷ Section 10.608(b) provides that when a 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.⁸

ANALYSIS

In the March 15, 2009 request for reconsideration, appellant did not provide any argument of error. Appellant did not allege or demonstrate that the Office erroneously applied or

² Docket No. 08-250 (issued May 5, 2008).

³ Docket No. 09-09 (issued February 18, 2009).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8128(a).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Id.* at § 10.608(b)(1) and (2).

⁸ *Id.* at § 10.608(b).

interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, she was 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).⁹

With respect to the third above-noted requirement under section 10.606(b)(2), on reconsideration appellant resubmitted a June 19, 2008 report from Dr. Fritzhand. This report had previously been reviewed by both 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.¹⁰

As 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 by the Office, it properly denied her reconsideration requests.¹¹

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).¹²

⁹ *Id.* at § 10.606(b)(2).

¹⁰ *Freddie Mosley*, 54 ECAB 255 (2002).

¹¹ *Supra* note 6.

¹² The Board notes that appellant submitted evidence subsequent to the April 6, 2009 decision of the Office. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence that was before the Office at the time it rendered its decision. 20 C.F.R. § 501.2(c); *M.B.*, 60 ECAB ____ (Docket No. 09-176, issued September 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2009 be affirmed.

Issued: January 27, 2010
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