

employment incident occurred as alleged, the medical evidence failed to establish that his atelectasis condition was causally related to the work incident. The facts as set forth in the Board's previous decision are hereby incorporated by reference.¹

By letter dated March 3, 2009, appellant, through his attorney, filed a request for reconsideration before the Office. In an October 15, 2008 report, Dr. Daniel S. McGuire, appellant's attending physician, stated that he was "still suffering from left-sided chest pain ever since his work accident." Appellant was diagnosed with atelectasis, possibly caused by shallow breathing because of increased pain he experienced when taking a deep breath. Dr. McGuire noted that this was the only positive objective finding except wall tenderness. On February 4, 2008 Dr. McGuire noted that appellant had pain in his left chest "since an accident at work" and that a magnetic resonance imaging scan of November 11, 2007 showed atelectasis which was most probably the result of splinting, *i.e.*, not taking a deep breath because of the pain in his chest.

In a decision dated June 8, 2009, the Office denied appellant's request for reconsideration without conducting a merit review of the case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's 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.³ 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.⁴ 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.⁵

¹ Docket No. 08-1040 (issued September 5, 2008). The Board notes that on June 26, 2007 appellant, then a 47-year-old transportation screener, alleged that he sustained an injury to the upper left side of his chest while lifting a bag in the performance of duty. The Board further notes that, on January 25 and February 2, 2009, it issued orders dismissing appellant's appeals as he did not file an appeal from a valid decision of the Office. Docket Nos. 08-1830 and 09-66.

² 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 her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

ANALYSIS

Appellant filed a timely request for reconsideration before the Office's determination from the denial of his claim of injury on June 26, 2007. In a June 8, 2009 decision, the Office denied appellant's request for reconsideration without reviewing the merits of his case.

The Board finds that the Office properly denied appellant's request for reconsideration. Appellant has not shown that the Office erroneously applied or interpreted a specific point of law nor has he set forth a relevant legal argument not previously considered by the Office. Appellant submitted two medical reports from Dr. McGuire after the Office issued its last merit decision; however, neither report addressed the causal relationship between appellant's work incident of June 26, 2007 and his atelectasis. These reports merely note that appellant experienced left-sided chest pain "since a work accident" and that testing showed atelectasis. Dr. McGuire's reports of February 4 and October 15, 2008, while new, are cumulative of the physician's prior reports of record. He did not cure the deficiencies noted in his prior reports on the issue of causal relation. Evidence that repeats or duplicated that already of record and previously considered, is not a basis for reopening a case on the merits.⁶

Appellant has not established that the Office improperly refused to reopen his claim for review of the merits under section 8128(a) of the Act. He 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. Accordingly, the Office properly denied merit review of appellant's claim.

CONCLUSION

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

⁶ *Richard Yadrow*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2009 is affirmed.

Issued: March 8, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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