

FACTUAL HISTORY

Appellant, then a 45-year-old custodian, filed a traumatic injury claim (Form CA-1) on March 6, 2008 alleging that on February 29, 2008 she was walking in front of an elevator when another employee was exiting his office and she tripped and fell after making physical contact with him. She alleged that she injured both of her legs, both of her arms and her left knee.

By decision dated June 20, 2008, the Office denied appellant's claim, finding that she did not submit sufficient medical evidence to establish that she sustained an injury under the Federal Employees' Compensation Act.² While appellant established that the employment incident occurred, she failed to provide a firm diagnosis that could be connected to the incident.

On July 17, 2008 appellant requested reconsideration and submitted a July 16, 2008 medical report by Dr. Nelson Henry, a Board-certified family practitioner, in support of her claim. Dr. Henry diagnosed resolving trauma to the right knee, right leg, left leg, right arm, shoulders and right hip.

By decision dated September 10, 2008, the Office denied modification of the June 20, 2008 decision, finding that the submitted evidence did not establish that appellant sustained an injury as defined in the Act.

On November 22, 2008 appellant requested reconsideration. She submitted a November 10, 2008 report by Dr. Henry containing the same diagnosis as the July 16, 2008 report.

By decision dated January 22, 2009, the Office denied appellant's request.

On September 2, 2009 appellant requested reconsideration. She resubmitted the medical report by Dr. Henry dated November 10, 2008.

By decision dated September 29, 2009, the Office denied appellant's request for reconsideration of the merits. It found that she did not raise a relevant legal argument not previously considered and the medical report of Dr. Nelson had been previously considered by the Office.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act³ the Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or an argument that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) or constitutes relevant

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, the 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).

and pertinent new evidence not previously considered by the Office.⁴ The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁵

ANALYSIS

In support of her September 2, 2009 reconsideration request, appellant submitted a November 10, 2008 report by Dr. Henry. The Board notes that the report was previously of record and had been reviewed by the Office in a decision dated January 22, 2009. As the report repeats evidence already in the case record and previously reviewed by the Office, it is not relevant and pertinent new evidence.

Appellant further did not submit any evidence to show that the Office erroneously applied or interpreted a specific point of law or that advances a relevant legal argument not previously considered by the Office. Therefore, she has not established a basis for reopening her case for a merit review.⁶

CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by the Office or evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law. Therefore, the Office properly refused to reopen her claim for further consideration of the merits of her claim under 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.606(b)(2). See *L.T.*, 61 ECAB ___ (Docket No. 09-1798, issued August 5, 2010).

⁵ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁶ See *L.H.*, 59 ECAB 253 (2007), *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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