

head causing a contusion. The attached supervisor's report noted that appellant was seen by a Dr. Yao at the New York University Downtown Hospital.

On July 1, 2005 the Office denied appellant's claim on the grounds that he did not establish that an incident occurred at the time, place and in the manner described or that a diagnosed medical condition existed as a result of the claimed incident.

On June 28, 2006 appellant requested reconsideration and submitted additional documents.

On September 29, 2006 the Office issued a merit decision finding that the incident occurred as alleged but that there was no medical evidence to indicate that the incident caused an injury.

On September 28, 2007 appellant requested reconsideration and submitted additional medical information in support of his claim. An April 11, 2005 nursing history and assessment record noted that appellant "was released/cleared by Dr. Woes. Head pain -- hematoma to forehead. Immobilized on backboard, neck collar on. More discomfort than pain" and was signed by a nurse. An April 11, 2005 "Aftercare Suggestions" note diagnosed a contusion to the forehead and recommended Tylenol as directed. The signature is illegible and does not indicate whether it was a medical doctor, physician's assistant or registered nurse. An April 11, 2005 "Vitals/Disposition" note diagnosed contusion to the head and contained an illegible signature and a doctor's number. The "History and Physical" note stated that appellant "complained of pain to his forehead when an elevator door fell and hit his head at work." Discomfort with neck pain, numbness and mild lightheadedness were also noted. The signature line was illegible but contained a "MD" after it and a number in the medical doctor number box.

In an October 15, 2007 nonmerit decision, the Office denied appellant's request for reconsideration. It found that the signatures on the documents were illegible and not considered to be completed by a physician. Therefore, the records were not probative medical evidence and immaterial to the issue of whether appellant sustained a diagnosed injury as a result of the April 11, 2005 incident.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence 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) constitutes relevant and pertinent new evidence not previously considered by the Office.²

Section 8128(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny

² 20 C.F.R. § 10.606(b)(2)(i-iii).

the application for reconsideration without reopening the case for review on the merits.³ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁴ Evidence that does not address a particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

In order to require the Office to reopen a case for merit review, appellant must show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered.⁶ She did not present any legal arguments but did submit documents not previously considered by the Office. The issue is whether these documents constitute relevant and pertinent new evidence. In the most recent merit decision, appellant's claim was denied due to the lack of medical evidence therefore only medical evidence to establish an injury related to the April 11, 2005 incident. She submitted medical notes from April 11, 2005 on the letterhead of New York University Hospital. While the signatures are not clear in two of the notes, the signature appears to be from a physician as "MD" was written after the name and a number was written in the medical number box. The "History and Physical" note contained the mechanism of injury, "an elevator door fell and hit his head." The "Vitals/Disposition" note diagnosed contusion to the head. These reports are not repetitive or duplicative and pertain to the relevant issue in this claim.

The Board finds that the evidence submitted constitutes relevant and pertinent new evidence not previously considered by the Office. As such, appellant is entitled to a merit review of his claim. The October 15, 2007 decision will be set aside and remanded in order for the Office to evaluate the evidence and issue a decision on the merits.

CONCLUSION

The Board finds that the Office improperly refused to reopen appellant's claim for further review of the merits.

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

⁵ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

⁶ *See supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2007 decision of the Office of Workers' Compensation Programs be set aside and remanded for further action consistent with this decision.

Issued: July 15, 2008
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