

¹ 5 U.S.C. § 8101 *et seq.*

A hearing was held, at appellant's request, on October 13, 2010. After the hearing, appellant submitted a November 22, 2010 report by Dr. Martin. Dr. Martin reported that appellant had been under his care since April 5, 2010 and that he rated appellant for hip pain which began on January 23, 2010 that was correlated to a change in her work position from that of a clerk to that of a walking route. He noted that appellant was diagnosed with femoral acetabular impingement (FAI) with associated degenerative labral tear. Dr. Martin stated that appellant had continued to try to work her walking route job, but had continued difficulty with the hip. He noted that appellant's job required prolonged walking and climbing of stairs, both which can increase stress to the labrum, which can produce inflammation and resulting pain. Dr. Martin further noted that on multiple reevaluations, appellant had been consistent with her examination isolating her difficulties to her FAI and labral tear and that she consistently indicated poor core stability as a result of and also contributing to her current complaints.

By decision dated December 28, 2010, the hearing representative affirmed the June 2, 2010 decision denying appellant's claim. The hearing representative noted that although the record was left open for the submission of additional evidence for 30 days, no additional evidence was received.

On March 2, 2011 appellant, through her counsel, requested reconsideration. In support thereof, appellant's counsel submitted return to work notes dated February 21 and May 23, 2011 wherein Dr. Martin stated that she could return to work with restrictions.

By decision dated June 6, 2011, OWCP declined appellant's request for reconsideration without conducting a merit review.

OWCP denied appellant's claim as it found that the medical evidence did not establish that appellant sustained a medical condition causally related to the accepted factors of her federal employment. As the Board does not have jurisdiction to review the merits of the case, the sole issue on appeal is whether OWCP properly denied appellant's timely filed reconsideration request.

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP 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

² 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

In requesting reconsideration, appellant did not argue that OWCP erroneously interpreted a specific point of law nor did she advance a relevant legal argument not previously considered. However, the Board notes that the record contains a report that was not previously considered by OWCP, *i.e.*, the November 22, 2010 report by Dr. Martin. In the reconsideration decision, OWCP found that this report was repetitive in nature and previously considered. Although this report was before OWCP at the time the hearing representative issued her decision, the hearing representative did not address this report. In fact, she incorrectly indicated that no new evidence had been received after the hearing. Furthermore, Dr. Martin further discussed his treatment of appellant and the relationship between appellant's FAI and her work activities. In this regard, Dr. Martin stated that appellant's job required prolonged walking and climbing stairs which could lead to stress of the labrum, resulting in inflammation accompanied by pain. The Board concludes that his report constitutes pertinent new and relevant evidence, with regard to causal relationship, that was not considered by OWCP. The Board finds, therefore, that OWCP abused its discretion by denying appellant's request for reconsideration.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2011 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: May 23, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁵ *Id.* at § 10.608(b).