

<sup>2</sup> Under 5 U.S.C. § 8149 of FECA and 20 C.F.R. §§ 501.2(c) and 501.3(a) of its implementing regulations, the Board has jurisdiction to review final adverse decisions of OWCP issued under FECA. According to 20 C.F.R. § 501.3(e), for OWCP decisions issued on or after November 19, 2008, the Board's review authority is limited to appeals filed within 180 days from the date OWCP issued its decision.

On appeal, counsel asserts that the medical record establishes continuing residuals of accepted conditions on and after July 7, 2008, the date OWCP terminated appellant's compensation benefits on the grounds that the accepted cervical sprain and aggravation of a preexisting C4-5 disc herniation had ceased without residuals. He also contends that OWCP should accept additional medical conditions as causally related to the accepted injuries. Counsel also argues that the July 22, 2011 reconsideration request contained new, relevant and pertinent evidence requiring a merit review.

### **FACTUAL HISTORY**

This is the third appeal before the Board in this case. Pursuant to the second appeal, by decision and order issued December 22, 2010,<sup>3</sup> the Board affirmed a January 11, 2010 OWCP decision affirming OWCP's prior termination of appellant's compensation benefits effective July 7, 2008 on the grounds that accepted cervical spine injuries had ceased without residuals. The Board found that the March 27, 2008 opinion of Dr. Robert Mantica, a Board-certified orthopedic surgeon and impartial medical examiner, continued to represent the weight of the medical evidence. The law and the facts of the case as set forth in the Board's prior decision and order are incorporated by reference.<sup>4</sup>

In a July 18, 2011 brief, counsel requested reconsideration. He contended that OWCP failed to properly consider medical evidence, factual evidence and legal arguments. Counsel also asserted that OWCP should have expanded appellant's claim to accept additional injuries and conditions, based on the opinion of Dr. David Gamburg, an attending Board-certified anesthesiologist and pain management specialist. He argued that Dr. Gamburg's opinion also established that appellant had continuing residuals of the accepted injuries on and after July 7, 2008. Counsel attached appellant's May 12, 2011 letter contending that Dr. Mantica's March 27, 2008 report was inaccurate as he misstated the medications she took for multiple nonoccupational conditions and discussed a fibromyalgia diagnosis that she believed was irrelevant to her claim.

By decision dated July 28, 2011, OWCP denied reconsideration and did not review the merits of the claim. It found that the July 18, 2011 request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>5</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a

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<sup>3</sup> Docket No. 10-844 (issued December 22, 2010).

<sup>4</sup> Counsel filed a petition for reconsideration on January 6, 2011. By order issued April 21, 2011 under Docket No. 10-844, the Board denied the petition for reconsideration on the grounds that it did not establish any error of fact of law warranting further consideration.

<sup>5</sup> 5 U.S.C. § 8128(a).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>8</sup> She need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>9</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>10</sup>

### ANALYSIS

OWCP lacks the authority to review a decision of the Board. Rather than reviewing the Board's December 22, 2011 decision, its authority extends to its own prior decisions.<sup>11</sup> The last merit decision issued by OWCP was the January 11, 2010 decision affirming the prior termination of appellant's compensation benefits effective July 7, 2008.

Appellant's July 18, 2011 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law or advance a new legal argument not previously considered by OWCP. Counsel's arguments as set forth in the July 18, 2011 brief are directly repetitive of the arguments made pursuant to the second appeal. Appellant's May 12, 2011 letter is also repetitive of her prior comments about Dr. Mantica.<sup>12</sup> As FECA's implementing regulations note, an application for reconsideration must set forth arguments or evidence satisfying one of the three requirements for obtaining a merit review.<sup>13</sup> Consequently, appellant is not entitled to a review of her case on the merits based on the third requirement under section 10.606(b)(2).<sup>14</sup>

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<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>8</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>9</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>10</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>11</sup> *T.B.*, Docket No. 11-1185 (issued February 17, 2012).

<sup>12</sup> *See C.N.*, Docket No. 08-1569 (issued December 9, 2008) (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).

<sup>13</sup> 20 C.F.R. § 10.608(b).

<sup>14</sup> *Id.* at § 10.606(b)(2)(iii).

On appeal, counsel asserts that the medical record establishes that appellant had continuing residuals of the accepted cervical spine conditions on and after OWCP terminated her compensation benefits on July 7, 2008 as the accepted conditions ceased without residuals. He also contends that OWCP should accept additional medical conditions as causally related to the accepted injuries. As set forth above, the Board does not have jurisdiction to review the merits of the claim. Counsel also argues that the July 22, 2011 reconsideration request contained new, relevant and pertinent evidence requiring a merit review. As set forth above, the July 22, 2011 request for reconsideration did not contain new, relevant evidence or argument requiring a review of the case on the merits.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 28, 2011 is affirmed.

Issued: May 3, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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