



## **FACTUAL HISTORY**

OWCP accepted that on October 21, 1991 appellant, then a 45-year-old letter carrier, sustained a lumbosacral sprain and cervical sprain in a rear-end motor vehicle collision. Appellant remained under treatment through 1996 for cervical and lumbar symptoms.<sup>2</sup>

The employing establishment assigned appellant a rehabilitation position with sedentary physical demand level through April 2004. It withdrew the assignment in May 2004 and assigned her a light-duty job. In an August 17, 2004 report, Dr. Benjamin C. Chouake, an attending Board-certified internist, found appellant able to work eight hours a day limited duty. He provided permanent work restrictions limiting walking to four hours a day, with lifting, pushing and pulling up to 25 pounds. Dr. Chouake renewed these restrictions in periodic reports through 2007, noting that appellant's condition remained unchanged. On June 12, 2008 he limited walking to two hours a day. Appellant worked light duty within these restrictions through 2008. She had intermittent absences due to neck and low back pain.<sup>3</sup>

On June 16, 2009 appellant filed a claim for a recurrence of disability commencing February 17, 2008. She alleged chronic pain from the accepted injuries disabled her for work. Appellant was off work from March 17 to 26, 2008. She again stopped work on January 22, 2009.<sup>4</sup>

In a July 16, 2009 letter, OWCP advised appellant of the additional medical and factual evidence needed to establish her claim, including a physician's rationalized opinion supporting a causal relationship between the accepted injuries and her condition on and after February 17, 2008. Appellant responded by July 29, 2009 letter asserting that employing establishment managers violated her work restrictions in 2008 and harassed her on January 22, 2009. She submitted April 29, 2009 reports from Dr. Chouake holding her off work for three to six months due to cervical and lumbar pain and stiffness. Appellant also provided a September 8, 2009 physical therapy prescription from Dr. Chouake.

By decision dated September 23, 2009, OWCP denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that she failed to establish that the accepted conditions changed or worsened on February 17, 2008.

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<sup>2</sup> Dr. Murray M. Braaf, an attending orthopedic surgeon, treated appellant from November 5, 1991 through August 1993 for cervical and lumbar radiculopathy due to the accepted injuries. Dr. Ernesto Seldman, an attending Board-certified orthopedic surgeon, submitted reports from February 1994 to June 1996 diagnosing left-sided lumbar radiculopathy causally related to the accepted lumbar sprain.

<sup>3</sup> By decision dated April 6, 2009, OWCP denied appellant's claim for a recurrence of disability commencing June 12, 2008 on the grounds that she did not establish a change in the accepted conditions or in her assigned light-duty position. This decision is not before the Board on the present appeal.

<sup>4</sup> Appellant stopped work on January 22, 2009 due to a separate claim for emotional stress under File No. xxxxxx034, denied by OWCP on April 16, 2009.

In a February 12, 2010 letter,<sup>5</sup> appellant requested reconsideration. She submitted undated statements attributing unspecified periods of disability to a May 19, 2008 right arm injury and harassment on January 22, 2009. Appellant submitted job descriptions from 2004 through March 18, 2008 and an October 2009 decision denying her emotional condition claim under another claim file. She also provided chart notes and physical therapy prescriptions from Dr. Chouake dated from October 10, 2008 through August 14, 2010. These documents do not mention appellant's condition on or about February 17, 2008.

By decision dated December 6, 2010, OWCP denied reconsideration on the grounds that the evidence submitted was irrelevant to the claim as it did not address the claimed recurrence of disability commencing February 17, 2008.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>6</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show 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.<sup>7</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>8</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>9</sup> The claimant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>10</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>11</sup>

### **ANALYSIS**

OWCP issued a September 23, 2009 decision finding that appellant did not establish that she sustained a recurrence of disability commencing February 17, 2008 due to accepted cervical

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<sup>5</sup> OWCP did not image appellant's request into the record until September 29, 2010. It found that her request was timely filed within one year of the September 23, 2009 decision.

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> *Id.* at § 10.608(b). See also *D.E.*, 59 ECAB 438 (2008).

<sup>9</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>10</sup> See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>11</sup> *Annette Louise*, 54 ECAB 783 (2003).

and lumbar sprains. Appellant requested reconsideration on February 12, 2010 asserting that she was disabled for work due to workplace harassment on January 22, 2009 and a May 19, 2008 right arm injury. In a December 6, 2010 decision, OWCP denied reconsideration as the evidence submitted was irrelevant.

To be considered relevant evidence, the documents submitted on reconsideration must address the issue of whether appellant sustained a recurrence of disability on February 17, 2008. In her February 12, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Instead, appellant attributed unspecified periods of disability to events after February 17, 2008, including an accepted May 19, 2008 injury and alleged January 22, 2009 harassment. Dr. Chouake's chart notes and prescriptions do not address her condition as of February 17, 2008. Therefore, the factual and medical evidence appellant submitted in support of her request is irrelevant to the recurrence claim. It does not require reopening the record for further merit review.<sup>12</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that OWCP noted incorrect dates in its December 6, 2010 decision. However, she did not identify any particular errors or explain how these discrepancies adversely affected the claim. Therefore, appellant's contentions are without merit.

### **CONCLUSION**

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

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<sup>12</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Mark H. Dever*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 6, 2010 is affirmed.

Issued: December 21, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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