

FACTUAL HISTORY

Appellant, then a 61-year-old nurse, injured her left arm and left shoulder on January 24, 2010 when she was grabbed by a patient. She filed a claim for benefits, which OWCP accepted for left shoulder and neck strains. OWCP paid compensation for wage loss for intermittent periods of work-related disability.

On May 14, 2010 appellant filed a Form CA-7, claiming compensation for wage loss from May 2 to 13, 2010.

In a report dated June 15, 2010, Dr. J. Allan Goodrich, Board-certified in orthopedic surgery, stated that appellant had not returned to work since the January 24, 2010 work injury. He advised that she underwent a magnetic resonance imaging (MRI) scan which showed spondylitic changes but no acute disc herniation.² Dr. Goodrich stated that appellant was not able to specify the disc level causing her pain. He would schedule her for a computerized axial tomography (CAT) scan/myelogram of her cervical spine but did not think she would require any kind of surgical intervention. A May 14, 2010 work capacity evaluation by Dr. Goodrich advised that appellant was capable of performing her usual job.

By decision dated July 9, 2010, OWCP denied compensation for wage loss for the period May 2 to 13, 2010.

In a report dated July 12, 2010, Dr. Goodrich stated that the results of the cervical CAT scan/myelogram showed multilevel spondylosis of the neck at C3-6. He opined that the C5-6 spondylosis was associated with the cutoff of the nerve root and was probably the origin of her pain. Dr. Goodrich was unable to definitively state this, however, based on her clinical examination. He discussed the risks and benefits of cervical disc fusion. Dr. Goodrich opined that the spondylosis was not a new condition stemming from her January 2010 work injury, although it could have been exacerbated by it. He stated that the results of her electromyogram and nerve conduction studies were not conclusive since there was nonspecific radiculopathy, incomplete findings of carpal tunnel syndrome, no Tinel's sign at the wrist and no positive Phalen's test.

On December 3, 2010 appellant filed a Form CA-7, claiming compensation for wage loss from May 13 to September 10, 2010.

By decision dated January 31, 2011, OWCP denied compensation for wage loss from May 13 to September 10, 2010.

By letter dated February 7, 2011, appellant's attorney requested an oral hearing, which was held on May 6, 2011.

On March 21, 2011 appellant filed a Form CA-7, claiming compensation for wage loss from May 4, 2010 to March 24, 2011.

² Appellant underwent a cervical MRI scan on March 5, 2010 that reported early minimal degenerative disc changes with disc desiccation at C5-6, left lateral spondylosis at C3-4 and a small disc protrusion at C4-5 and C5-6

By decision dated May 10, 2011, OWCP denied compensation for wage loss from May 4, 2010 to March 24, 2011.

By letter dated May 17, 2011, counsel requested an oral hearing, contesting OWCP's decision of May 10, 2011. A hearing was held on September 14, 2011.

By decision dated July 25, 2011, OWCP's hearing representative affirmed the January 31, 2011 decision, denying compensation from May 13 to September 10, 2010.

In a September 28, 2010 report, received by OWCP on November 7, 2011, Dr. Goodrich advised that appellant intended to undergo surgery to ameliorate her cervical condition. He reiterated that she had multilevel spondylosis, primarily at the C5-6 level, which was consistent with her recurrent symptomatology, in addition to left C5 radiculopathy. Dr. Goodrich stated that appellant continued to have neck, left shoulder and left arm pain which had not resolved with conservative care.

In treatment notes dated October 12 and December 23, 2010, received by OWCP on November 7, 2011, Dr. Goodrich noted that appellant underwent surgery to ameliorate her cervical condition. In a December 23, 2011 report, he stated that she was doing well after undergoing an anterior cervical discectomy and interbody fusion at C5-6, with good strength, intact sensation and good cervical range of motion.

By decision dated December 6, 2011, OWCP's hearing representative affirmed the March 21, 2011 decision, denying compensation from May 4, 2010 to March 24, 2011.

By letter dated December 22, 2011, received by OWCP on July 28, 2012, counsel requested reconsideration of the December 6, 2011 decision. Appellant resubmitted Dr. Goodrich's reports dated June 15 to December 23, 2010. She did not submit any new medical evidence with her request.

By decision dated August 9, 2012, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

³ 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. The evidence that she submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ Appellant submitted several 2010 reports from Dr. Goodrich which OWCP previously reviewed. This evidence is therefore cumulative and duplicative.⁶ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁵ See *David J. McDonald*, 50 ECAB 185 (1998).

⁶ See *Patricia G. Aiken*, 57 ECAB 441 (2006).