

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This is the fourth appeal in the present case. In a September 30, 2004 decision, the Board affirmed OWCP decisions dated October 1, 2002 and January 22, 2003 finding that appellant failed to establish that her seizure disorder was caused by a December 4, 1984 work incident and properly denied her request for reconsideration. In a December 16, 2009 decision, the Board affirmed a February 6, 2009 OWCP decision denying appellant's request for an oral hearing. In an April 5, 2011 decision, the Board affirmed its decision dated May 7, 2010 finding that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error. The facts and the circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.³

On October 11, 2011 appellant requested reconsideration. She asserted that her case file was destroyed in 2002, her records were not complete and that her case was unjustly closed. Appellant submitted a December 16, 2010 letter to the Secretary of Labor summarizing the history of appellant's claim. She generally alleged that OWCP poorly managed her claim and she deserved justice. A March 25, 2011 letter from her congressional representative requested assistance with her claim. In an April 19, 2011 letter, OWCP responded noting appellant's claim was accepted as a contusion to the head and that she had attempted to have a seizure disorder accepted as work related; but the claim was denied on multiple occasions. Appellant submitted copies of e-mails sent to OWCP dated August 6 to December 19, 2011 asserting that her case file was destroyed in error. She asserted that she had a traumatic brain injury and seizure disorder and underwent surgery; but OWCP did not expand her claim to include these conditions. Appellant stated that her treating physician, a Dr. Potolicchio, submitted medical reports supporting her claim for a traumatic brain injury.

By decision dated October 28, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain

³ Docket No. 10-2091 (issued April 5, 2011); Docket No. 09-1461 (issued December 16, 2009) Docket No. 03-1123 (issued September 30, 2004). OWCP accepted appellant's claim for contusion to the face or scalp from blunt trauma.

⁴ 5 U.S.C. § 8128(a).

review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(2) Advances a relevant legal argument not previously considered by (OWCP);
or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

The most recent merit decision, OWCP’s November 2, 2005 decision, denied appellant’s claim for compensation on the grounds that she failed to meet her burden of proof to establish that the seizure disorder was caused by the December 4, 1984 employment injury. It denied her October 11, 2011 reconsideration request, without a merit review.

The Board does not have jurisdiction over the merits of the claim. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her October 11, 2011 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She asserted that her case file was destroyed in 2002, her records were not complete and that her case was unjustly closed. These assertions do not establish a legal error by OWCP or constitute a new and relevant legal argument as OWCP had previously considered appellant’s contentions. The underlying issue in this case was whether appellant submitted sufficient medical evidence to establish that her seizure disorder was caused by the December 4, 1984 employment injury. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the, third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant submitted a December 16, 2010 letter to the Secretary of Labor summarizing the history of her claim and asserting that it was improperly processed by OWCP. She also submitted a March 25, 2011 letter from her congressional

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b).

representative. In an April 19, 2011 letter, OWCP responded to appellant's congressman summarizing her claim and noting a seizure disorder was not accepted as work related. Appellant also submitted copies of e-mails she sent to OWCP asserting that it destroyed her case file in error. This evidence is not relevant and merely repeated appellant's general allegations that were previously considered.⁷ This evidence is not relevant to the basis for the denial of her claim. As noted, the underlying deficiency in the claim is appellant's failure to submit rationalized medical evidence which establishes a causal relationship between her claimed seizure disorder and traumatic brain injury and her work injury on December 4, 1984. Evidence that is not germane to the issue on which the claim was denied is insufficient to constitute a basis for reopening the case for a merit review. Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board 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 asserted that she submitted sufficient evidence to support that she sustained a seizure disorder as a result of her December 4, 1984 work injury. As noted, the Board does not have jurisdiction over the merits of her claim, only whether she submitted sufficient evidence to warrant reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2). The evidence submitted with appellant's October 11, 2011 reconsideration request which was insufficient to warrant a merit review of her decision.

CONCLUSION

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

⁷ 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; *see Daniel DeParini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

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

Issued: January 3, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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