

and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).³

FACTUAL HISTORY

This case has previously been before the Board. In a February 3, 2012 decision, the Board affirmed OWCP's December 20, 2010 decision denying appellant's claim for a recurrence of total disability for the period June 28 through December 20, 2010.⁴ In a July 10, 2012 decision, the Board affirmed May 3 and September 22, 2010 decisions denying her recurrence claim for the period December 21, 2010 through February 22, 2011. The Board also found that OWCP failed to properly address appellant's request for reconsideration of its May 19, 2010 decision and set aside the August 18, 2011 decision, remanding the case for a determination as to whether appellant submitted sufficient evidence or argument to require OWCP to reopen a case for merit review under section 8128(a) of FECA.⁵ By decision dated October 3, 2012, the Board affirmed the decision dated December 16, 2011 denying recurrence claims for the periods February 23 to June 3, 2011 and July 22 to December 16, 2011.⁶ In a December 4, 2012 decision, the Board affirmed OWCP's June 4, 2012 decision denying the recurrence claim for the period December 16, 2011 through May 18, 2012.⁷ The facts and the law contained in those decisions are incorporated herein by reference. The relevant facts are delineated below.

On April 30, 2002 appellant, then a 33-year-old part-time, flexible mail processor, filed an occupational disease claim alleging that she sustained injuries to her fingers and wrists due to repetitive work activities. OWCP accepted her claim for left shoulder tendinitis and left cubital tunnel syndrome.⁸

On July 25, 2007 Dr. Linwood Black, appellant's treating physician, provided work restrictions based on her accepted cubital tunnel syndrome condition. Restrictions included no pushing, pulling or lifting, no reaching above the shoulder and no repetitive work.

Appellant worked in modified mail processing positions, which accommodated her medical restrictions. On August 20, 2007 she accepted a position as a modified mail handler/scanning equipment monitor. Duties required appellant to account for equipment;

³ Appellant indicated that she was appealing an August 14, 2012 decision. The Board notes, however, that the record does not contain a final decision issued on August 14, 2012.

⁴ Docket No. 11-1350 (issued February 3, 2012).

⁵ Docket No. 12-57 (issued July 10, 2012). The Board also set aside an August 18, 2011 decision denying merit review remanded the case for a merit review of a May 19, 2010 decision denying a recurrence claim for the period March 30 through June 27, 2010.

⁶ Docket No. 12-708 (issued October 3, 2012).

⁷ Docket No. 12-1422 (issued December 4, 2012).

⁸ Appellant's April 23, 2002 claim was accepted for contusions of the chest and left arm, elbow and shoulder in File No. xxxxxx836. File No. xxxxxx836 was combined with the instant case (File No. xxxxxx142), with File No. xxxxxx142 serving as the master file.

inventory paper and batteries; and tag defective equipment. Physical requirements included good vision and the ability to write notes, communicate verbally and identify defective equipment. Appellant worked in this position until October 20, 2008, when she was taken off work by Dr. Black. On February 14, 2009 Dr. Black released appellant to return to work subject to her prior restrictions.

Appellant filed a claim for a recurrence of disability beginning October 20, 2008. She alleged that she was totally disabled from October 20 2008 through February 13, 2009, and that her supervisor refused to allow her to return to work on February 14, 2009, when she was released to work with restrictions. By decision dated March 9, 2010, OWCP accepted appellant's recurrence claim for the period October 22, 2008 through March 7, 2010.⁹

On March 29, 2010 appellant accepted a full-time modified position as a debris screener. Duties included: screening debris for mailable items; applying correct routing codes; and color coding labels. Physical requirements of the position included manipulating light debris (2 hours); retrieving and inserting routing codes (2 hours); and writing time and date on tags. Appellant worked eight hours on March 29, 2010. She did not return to work after working one shift.

On April 9, 2010 appellant filed a claim for compensation alleging total disability as of March 30, 2010.

On April 19, 2010 OWCP informed appellant that the evidence she submitted was insufficient to establish that she was disabled during the claimed period. It advised her to submit medical evidence with examination findings, a diagnosis and an opinion regarding her disability from work.

Appellant submitted an April 29, 2010 status report from Dr. Black diagnosing cubital tunnel syndrome and reflecting that she was disabled from March 30 through June 27, 2009. Stating that she could return to work on June 30, 2010, Dr. Black provided restrictions including no pushing, pulling, reaching above the shoulder, grasping and no repetitive movements.

By decision dated May 19, 2010, OWCP denied appellant's recurrence claim for the period March 30 through June 27, 2010 on the grounds that the record did not contain medical evidence establishing that appellant was disabled during the claimed period.

In a letter dated May 20, 2010, appellant requested additional time to obtain a letter from her physician. She stated that she had returned to work on March 29, 2010 "when [her] left arm was aggravated due to the job."

On May 20, 2010 the employing establishment offered appellant another modified job as a debris screener in Des Moines, IA.¹⁰ Physical requirements of the position included manipulating light-weight debris up to four hours and writing time and date on tags. An

⁹ OWCP subsequently paid appellant compensation through March 26, 2010.

¹⁰ Correspondence in the record reflects that appellant was contemplating a move to Des Moines, IA and that the May 20, 2010 offer was an attempt to accommodate appellant.

employing establishment physician forwarded a copy of the proposed job to Dr. Black for his review.

In a letter dated June 4, 2010, Dr. Black reiterated his diagnosis of cubital tunnel syndrome and indicated that he had reviewed the proposed position. He opined that the job would be ideal for appellant, since her injury was limited to the left arm.

Appellant submitted a May 22, 2010 report from Dr. Tariq M. Awan, a Board-certified family practitioner, who noted appellant's report that, after returning to work on March 27, 2010, her injury was exacerbated on March 29, 2010 by packages falling on her left arm. On examination of the left shoulder, appellant had tenderness to palpation over the AC joint and full range of motion in forward/lateral elevation and internal/external rotation. Motor tests performed included elevation, abduction, supraspinatus, subscapularis, elbow flexion/extension, wrist flexion/extension and finger abduction, which were all 5/5. Sensation was intact to pinprick. Tinel's, Hawkin's and Neer's tests were positive. Dr. Awan diagnosed left shoulder AC joint arthrosis, left shoulder rotator cuff tendinitis, left radial tunnel vs. cubital tunnel vs. cervical radiculitis and lumbar disc disease.

On May 17, 2011 appellant requested reconsideration of the May 19, 2010 decision.

The record contains disability slips from Dr. Awan for the period October 23 through December 20, 2010. On October 23, 2010 he diagnosed lower back pain, left shoulder rotator cuff tendinitis and left cubital tunnel syndrome. He stated that appellant was disabled from March 30 through November 30, 2010. On December 4, 2010 Dr. Awan found her disabled from March 30 through December 3, 2010. On December 20, 2010 he disabled her from December 5 to 22, 2010.

In a merit decision dated September 17, 2012, OWCP denied modification of its May 19, 2010 decision, finding that appellant had failed to establish that she was disabled due to her accepted condition for the period March 30 through June 27, 2010.

On March 19, 2012 appellant requested reconsideration "due to new medical evidence." She submitted the December 4, 2010 report from Dr. Awan and the October 23, December 4 and 20, 2010 disability slips. In a February 17, 2012 attending physician's report, Dr. Awan indicated that appellant was disabled from March 30 through December 26, 2010 and that her injury was exacerbated at work on March 29, 2010. The record contains prescriptions for physical therapy and reports pertaining to other periods of claimed disability.

The record contains an unsigned December 12, 2010 emergency room report from Broadlawns Medical Center reflecting that appellant received a prescription for Vicodin and Neurontin on that date. The record also contains a report of a December 19, 2011 EMG.

In a December 20, 2010 disability certificate, Dr. Aleeq Rehman, a treating physician indicated that appellant was on work disability from December 1, 2010 through January 20, 2011. Work restrictions included no overhead lifting, no repetitive or overhead work, no above-the-shoulder work and no bending or twisting.

In a March 12, 2012 disability certificate, Dr. Rhona A. Fingal, a Board-certified internist, indicated that appellant was disabled from July 22, 2011 through July 10, 2012.

By decision dated April 2, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence and argument submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of OWCP's regulations define "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.¹¹ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹²

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence establishes that he or she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability, and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹³

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁴

ANALYSIS -- ISSUE 1

OWCP accepted appellant's compensation claims for the period October 22, 2008 through March 26, 2010. In its May 19, 2010 decision, it denied her claim for disability compensation from March 30 through June 27, 2010 following her return to work. The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability for the period March 30 through June 27, 2010.

¹¹ 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

¹² *Id.*

¹³ *Conard Hightower*, 54 ECAB 796 (2003).

¹⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

OWCP accepted appellant's claim for left shoulder tendinitis and left cubital tunnel syndrome. From August 20, 2007 until October 20, 2008, appellant worked as a modified mail handler subject to medical restrictions, which included: no pushing, pulling or lifting; no reaching above the shoulder; and no repetitive work. Having been released by her treating physician to return to work, appellant accepted a full-time modified position as a debris screener effective March 29, 2010. The duties of the position, which included screening debris for mailable items, applying correct routing codes and color coding labels, were consistent with her restrictions. The record reflects, however, that appellant worked only one day, after which she claimed total disability. The evidence of record does not establish that appellant was disabled from her light-duty job due to her accepted condition.

Appellant suggests that the light-duty assignment exceeded her restrictions because it required repetitive movement. There is no evidence of record supporting her claim that her light-duty assignment exceeded her restrictions. None of the many medical reports submitted by appellant reflected that her job duties exceeded her recommended restrictions. The Board finds that she has failed to establish an inability to work due to the withdrawal of her light-duty assignment or due to the alteration of the physical requirements of her assignment so that they exceeded her established physical limitations.¹⁵ On the contrary, Dr. Black opined on June 4, 2010 that the modified position was ideal for appellant.

Medical evidence of record does not include a rationalized report from a physician supporting appellant's claim that she was totally disabled as of March 30, 2010 due to residuals of her accepted injury. In an April 29, 2010 status report, Dr. Black diagnosed cubital tunnel syndrome and stated that appellant was disabled from March 30 through June 27, 2009. Stating that she could return to work on June 30, 2009, he provided restrictions including no pushing, pulling, reaching above the shoulder, grasping and no repetitive movements. Dr. Black's report, however, does not contain examination findings or any explanation as to how appellant's claimed disability was causally related to her accepted injury. A medical opinion that is not fortified by rationale is of diminished probative value.¹⁶ Moreover, as noted, Dr. Black opined on June 4, 2010 that the proposed modified job was ideal for appellant.

Reports from Dr. Awan do not support appellant's recurrence claim. On May 22, 2010 Dr. Awan noted appellant's report that her injury was exacerbated on March 29, 2010 by packages falling on her left arm. On October 29, 2010 he stated that her left upper extremity condition flared up when she was transferred to a position with the employing establishment in Iowa. Such an event would constitute a new injury, rather than a spontaneous change resulting from appellant's prior injury.¹⁷

Disability slips from Dr. Awan for the period October 23, 2010 through February 17, 2012 contain diagnoses and opinions regarding various periods of disability between March 30 and December 22, 2010. These reports, however, do not contain any explanation as to how the

¹⁵ *Id.*

¹⁶ *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁷ *See supra* note 11.

purported disability was causally related to appellant's accepted condition. Therefore, they are of limited probative value. Physicians' reports and reports of diagnostic tests that do not contain an opinion regarding appellant's disability during the claimed period are of diminished probative value and are insufficient to establish appellant's claim.¹⁸ To the degree that they do not address the period in question, they are also irrelevant. As noted, the Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.¹⁹

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of from March 30 through June 27, 2010 due to residuals of her accepted injury or that she was unable to perform the duties of the modified position. She has provided no evidence that OWCP required her to work outside of her restrictions, or that her condition worsened to the degree that she was unable to perform the duties of the position.

On appeal, appellant reiterated her contention that she is entitled to compensation for total disability due to her accepted injury. For reasons stated, the Board finds that she has failed to meet her burden of proof to establish her claim.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. She has failed to provide rationalized opinion evidence establishing that as of March 30, 2010 the employing establishment withdrew, or was unable to provide her with, a light-duty job within her medical restrictions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,²⁰ OWCP 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.²¹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her

¹⁸ Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value. *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁹ *Fereidoon Kharabi*, *supra* note 14.

²⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the 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).

²¹ 20 C.F.R. § 10.606(b)(2).

application for review within one year of the date of that decision.²² When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.²³ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²⁴

ANALYSIS -- ISSUE 2

Appellant's March 19, 2012 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered. Consequently, appellant 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). A claimant may be entitled to a merit review by submitting new and relevant evidence; appellant, however, did not submit new and relevant medical evidence.

Appellant's claim was denied on the grounds that the medical evidence was insufficiently rationalized to establish that she was totally disabled as of June 28, 2010 due to residuals of her accepted injury. The evidence submitted in support of her reconsideration request did not contain a rationalized opinion on her disability during the claimed period. The Board finds, therefore, that appellant did not submit new and relevant medical evidence in this case.

In reports and disability slips for the period October 23, 2010 through February 17, 2012, Dr. Awan opined that appellant was disabled for various periods, including the claimed period from March 30 through June 27, 2010. As these reports did not explain how the claimed disability was causally related to appellant's accepted condition, they are irrelevant to the issue at hand. Additionally, they merely repeat evidence that was previously submitted and are, therefore, cumulative and duplicative in nature.²⁵

The remaining evidence submitted, including emergency room reports, prescriptions for physical therapy, reports of diagnostic studies, and disability certificates from Drs. Rehman and Fingal, do not address how appellant's claimed disability from March 30 through June 27, 2010 was causally related to her accepted injury. They are therefore, irrelevant and insufficient to warrant merit review. The Board finds that the evidence submitted by appellant does not constitute relevant and pertinent new evidence not previously considered by OWCP.²⁶

²² *Id.* at § 10.607(a).

²³ *Id.* at § 10.608(b).

²⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

²⁶ *See Susan A. Filkins*, 57 ECAB 630 (2006).

The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her March 19, 2012 request for reconsideration.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability that was causally related to her accepted injury as of March 30, 2010.

The Board also finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 17 and April 2, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 25, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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