



## **FACTUAL HISTORY**

On April 2, 2014 appellant, then a 63-year-old mail assistant, filed an occupational disease claim alleging that she sustained pain in her back radiating to her neck and numbness in her hands and arms as a result of using the computer. She first became aware of her condition on June 20, 2013 and first realized it resulted from her employment on April 2, 2014. Appellant did not stop work.

In a letter dated April 8, 2014, OWCP advised appellant that no evidence was submitted to establish her claim and requested additional evidence to demonstrate that she sustained a diagnosed condition as a result of her employment duties.

Appellant submitted a position description and Form SF-50 which indicated that she received a bonus based on performance.

In an April 15, 2014 e-mail Marie Gutzman, a mail manager, stated that appellant worked as a mail assistant and that there was a requirement of lifting not to exceed 70 pounds. She explained that, when appellant first mentioned her condition, an ergonomics analysis was done and all recommendations were implemented to alleviate the problem.

In an April 9, 2014 x-ray of the lumbar spine, Dr. Satya Sahu, a Board-certified diagnostic radiologist, observed disc space narrowing at L3-4, L4-5, and L5-S1 levels in the lower thoracic spine and facet hypertrophy at L5-S1 bilaterally. No fracture, subluxation, or spondylosis was noted. In an April 9, 2014 x-ray of the cervical spine, Dr. Steven Hake, a Board-certified diagnostic radiologist, found C5-6 and C6-7 disc space narrowing with bony foraminal encroachment and narrowing of the uncovertebral joints.

In an April 18, 2014 report, Dr. William H. Mouradian, a Board-certified orthopedic surgeon, noted that appellant worked for the employing establishment as a mail assistant for the past three years. He related that in June 2013 she began to experience pain and discomfort in her neck, mid back, and lower back which she attributed to working at a low setting table. Appellant's symptoms steadily worsened as she continued to work. Dr. Mouradian reviewed appellant's history and conducted an examination. He observed right and left lateral bending to 10 degrees, forward flexion to 60 degrees, and extension to 5 degrees of the lumbar spine. Right and left sitting straight leg raise was within normal limits. Right and left supine straight leg raise testing was to 65 degrees bilaterally. Range of motion of the cervical spine demonstrated flexion to 40 degrees, extension to 15 degrees, right and left rotation to 45 degrees, and right and left lateral bending to 15 degrees. Dr. Mouradian diagnosed cervical and lumbar spondylosis.

In a decision dated May 29, 2014, OWCP denied appellant's claim. It accepted that she worked as a mail assistant and sustained lumbar and cervical spondylosis. OWCP denied appellant's claim finding insufficient medical evidence to establish that her diagnosed conditions were causally related to her employment.

On June 25, 2014 OWCP received appellant's request for reconsideration. She stated that she experienced the injury at work while bending over a table that was not at the proper height. Appellant related that she experienced shooting pains in her neck, middle, and lower

back that persisted for several months. When her left arm began to go numb she sought medical treatment. Appellant noted that Dr. Mouridian indicated that her conditions were connected to her daily duties at work. She reported that Dr. Mouridian recommended physical therapy but she had not been able to get approval. Appellant contended that had she not been performing her duties at a low table she may not have sustained her injuries.

By decision dated September 18, 2014, OWCP denied appellant's request for reconsideration finding that her request did not meet any of the requirements for further merit review pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>2</sup> OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district office.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously

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<sup>2</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>3</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>4</sup> *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated May 29, 2014, OWCP denied appellant's claim finding that the medical evidence did not establish that her cervical and lumbar conditions were causally related to factors of her employment. On June 25, 2014 it received her request for reconsideration. In a narrative statement, appellant related that she experienced shooting pains in her neck, mid, and lower back as a result of bending over a table that was not at the proper height. She reviewed the medical treatment she received and reported that Dr. Mouridian indicated that her conditions were related to her duties at work. The Board notes that submission of this statement did not require reopening her case for merit review. OWCP denied appellant's claim finding that the medical evidence was insufficient to establish causal relationship. As the underlying issue in this case was a medical issue, it must be addressed by relevant new medical evidence.<sup>8</sup> Because appellant failed to submit new medical evidence along with her reconsideration request, she was not entitled to further merit review.

On appeal, appellant alleges that she continued to experience pain and numbness in her left arm and contended that her injury was due to work. The Board notes that the merits of her claim have previously been addressed. The Board does not have jurisdiction to review the merits of appellant's claim.<sup>9</sup> The Board can only review the September 18, 2014 nonmerit reconsideration decision to determine whether OWCP properly denied her reconsideration request.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

### CONCLUSION

The Board finds that OWCP properly denied appellant's June 25, 2014 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>9</sup> See 20 C.F.R. §§ 501.2(c) and 501.3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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