

**United States Department of Labor
Employees' Compensation Appeals Board**

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 16-0401
Issued: July 12, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 16, 2015 appellant filed a timely appeal from an August 10, 2015 merit decision and a September 3, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation effective July 16, 2014 as she refused an offer of suitable work under 5 U.S.C. § 8106(c); and (2) whether it properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 21, 1998 appellant, then a 35-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained pain and numbness in her thumb and wrist due to factors of her federal employment. She stopped work on February 17, 1998 and returned to modified employment on February 21, 1998.

OWCP accepted the claim, assigned file number xxxxxx772, for bilateral carpal tunnel syndrome, bilateral tenosynovitis of the wrists, bilateral lateral epicondylitis, and a right ulnar nerve lesion. Appellant underwent a left carpal tunnel release on February 22, 1999 and a right carpal tunnel release on April 19, 1999.

By decision dated November 24, 1999, OWCP found that appellant's actual earnings as a modified mail carrier effective September 11, 1999 fairly and reasonably represented her wage-earning capacity and terminated her compensation benefits. It explained that her actual wages either met or exceeded the wages of her date-of-injury position.

OWCP additionally accepted appellant's November 15, 1999 occupational disease claim for left carpal tunnel syndrome, assigned file number xxxxxx921, and her May 29, 2002 occupational disease claim for bilateral carpal tunnel syndrome, assigned file number xxxxxx682. Appellant underwent a left carpal tunnel release on June 19, 2000.² OWCP combined all claims under master file number xxxxxx772, which is the current claim.

By decision dated November 2, 2007, OWCP reduced appellant's compensation to zero based on its finding that her actual earnings as a modified lobby director effective March 26, 2007 fairly and reasonably represented her wage-earning capacity.³

Appellant again stopped work and received compensation for disability beginning September 29, 2010. She returned to work on February 2, 2011. On December 18, 2011 appellant again stopped work and underwent right cubital tunnel surgery on December 27, 2011 and left cubital tunnel surgery on February 3, 2012.

OWCP, on September 21, 2012, referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for a second opinion examination.

In an October 31, 2012 work restriction evaluation, Dr. Viralkumar Patel, a Board-certified surgeon, found that appellant could work full time performing repetitive movements of the wrists and elbows for four hours per day. He further opined that she could lift up to 30

² In a decision dated June 19, 2002, OWCP found that appellant received an overpayment of compensation in the amount of \$1,396.38 because she returned to part-time work on March 19, 2001 but received compensation for total disability until April 21, 2001. By decision dated September 26, 2002, OWCP found that she had not established that she sustained a recurrence of disability beginning May 30, 2002 due to her accepted work injury.

³ By decision dated June 22, 2011, OWCP found that appellant received an overpayment of compensation in the amount of \$1,202.33 because she returned to work on February 2, 2011 but received compensation for total disability from February 2 to 12, 2011. In a decision dated July 26, 2011, it granted her a schedule award for six percent permanent impairment of the right arm and three percent permanent impairment of the left arm.

pounds and push and pull up to 60 pounds. Dr. Patel indicated that appellant should not drive a vehicle at work.

Dr. Alexander examined appellant on November 27, 2012. In a November 28, 2012 report, he provided findings on examination of no hand weakness or upper extremity motor or sensory loss. Dr. Alexander determined that appellant had no objective findings of bilateral carpal tunnel syndrome or ulnar neuropathy and that her subjective complaints outweighed the objective findings. He found that her mild bilateral lateral epicondylitis would be aggravated by her usual employment but that she could work in a modified position. Dr. Alexander opined that the “type of work [appellant] was doing prior to her last round of work would be entirely consistent with her abilities. I would classify this as light duty.” In an accompanying work restriction evaluation, he found that appellant could sit, walk, and stand for six to eight hours per day, reach and reach above the shoulders for four to six hours per day, twist, bend, and stoop for two to three hours per day, and kneel and climb two to three hours per day. Dr. Alexander further determined that she could operate a motor vehicle both at work and to and from work, perform repetitive motions with the wrists and elbows, and push, pull, and lift 10 to 20 pounds for three hours per day.

On January 11, 2013 Dr. Patel concurred with Dr. Alexander’s findings regarding appellant’s ability to work.

On January 18, 2013 the employing establishment offered appellant a position as a lobby assistant. Appellant accepted the position on January 28, 2013.

On April 1, 2013 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained major depression due to her work duties and arm condition. In a letter dated April 1, 2013, she related that she visited Dr. Patel on February 8, 2013 and he advised her that she should only work four hours per day to avoid swelling and fatigue of her hand but refused to provide supporting documentation.⁴ Appellant’s supervisor permitted her to work four hours a day beginning February 11, 2013 based on Dr. Patel’s October 31, 2012 work restriction evaluation. Appellant alleged that she sustained depression as a result of her work injury and harassment and abuse by the employing establishment.

Appellant stopped work on April 15, 2013.

By letter dated May 10, 2013, OWCP granted appellant’s request to change attending physicians to Dr. Kenneth Barnwell, an internist. It advised her that it was developing her stress claim and asked that she submit medical evidence addressing causal relationship between a claimed condition due to stress and her employment injury.

On August 30, 2013 Alison E. Reed, a counselor, related that appellant asserted that she had physical and emotional pain because she could not perform all her job duties. Appellant was hospitalized in February 2012 after a suicide attempt and in April 2013 for depression and

⁴ By decision dated April 9, 2013, OWCP denied appellant’s claim for compensation for intermittent disability from January 30 through March 1, 2013. By decision dated May 14, 2013, it denied her claim for intermittent disability from March 2 to 31, 2013.

suicidal ideation. In August 2013 she again attempted suicide. Ms. Reed noted that appellant also had personal problems and diagnosed recurrent, moderate major depressive disorder.

In a September 2, 2013 report, Dr. Keisha M. Brown, a Board-certified internist, diagnosed major depression. She noted a history of multiple work injuries and that appellant believed that she was “unable to do anything including work because of her pain. [Appellant] is in a constant state of depression due to her inability to work and constant pain.” Dr. Brown related that it was “reasonable that chronic pain and lack of function would lead to depression.”

Dr. Barnwell, in an October 15, 2013 duty status report (Form CA-17), found that appellant could work for four hours per day lifting, carrying, pushing, and pulling up to 10 pounds. He further found that she could not perform continuous reaching or fine manipulation with breaks every hour.

In an internal memorandum dated October 24, 2013, OWCP deleted appellant’s occupational disease claim, file number xxxxxx439, as it was being developed as a consequential injury under the current file number xxxxxx772.

On November 19, 2013 OWCP held a conference to determine appellant’s current work restrictions and whether the January 18, 2013 job offer remained available. The employing establishment advised that the position was available but that she left work on April 15, 2013 after indicating that she could no longer perform the job duties. It offered appellant another position on October 2, 2013. Appellant initially accepted the position but then advised that it was not within her work restrictions.

By decision dated December 2, 2013, OWCP found that appellant had not sustained an employment-related recurrence of disability beginning April 15, 2013 or a consequential emotional condition claim. It determined that the medical evidence of record was insufficient to support that she sustained increased disability due to a consequential condition.

On April 17, 2014 the employing establishment advised appellant that the position of lobby assistant that she performed from January to April 15, 2013 remained available and instructed her to report to work on April 18, 2014. It enclosed a copy of the signed January 18, 2013 job offer. The position required intermittent standing and walking, lifting of or less than 20 pounds, limited bending, stooping, and twisting, and limited overhead activity. The duties included greeting customers, checking that parcels were properly wrapped, directing customers to vending machines and the service window, accepting change of address applications, and helping to weigh parcels. The employing establishment indicated that the duties would remain within the physical restrictions of appellant’s attending physician. It resent this letter to appellant on April 18, 2014, noting the correct OWCP claim number.

The employing establishment, in a telephone call dated April 18, 2014, advised OWCP that the position of lobby assistant did not require working with a keyboard.

Appellant telephoned OWCP on April 22, 2014 and related that the employing establishment told her that the job offer was no longer available.⁵ In a letter of the same date, she advised that the job offer provided by the employing establishment was only valid for 90 days and had already expired. Appellant asserted that receiving a copy of the January 2013 job offer did not constitute a legitimate offer. She requested reconsideration.

OWCP notified appellant on June 3, 2014 that the position of lobby assistant offered by the employing establishment on April 18, 2014 was suitable and provided her 30 days to accept the position or provide written reasons for her refusal. It determined that it was within the restrictions set forth by Dr. Patel in October 2012 and January 2013. OWCP informed appellant that an employee who refused an offer of suitable work without cause was not entitled to compensation. Appellant did not respond within the time allotted.

By decision dated June 3, 2014, OWCP denied modification of its December 2, 2013 decision.⁶ It found that the medical evidence of record did not show that appellant sustained a recurrence of disability after she stopped work in 2013 or a consequential stress condition.

In a decision dated July 16, 2014, OWCP terminated appellant's compensation and entitlement to a schedule award effective July 16, 2014 as she refused an offer of suitable work under section 8106(c)(2). It noted that she had not responded to the proposed termination of her compensation. OWCP determined that the October 31, 2012 report of Dr. Patel established that the offered position was suitable. It also verified that the position remained available.

Dr. Trishanna Sookdeo, Board-certified in family medicine, provided a report dated December 17, 2014. She diagnosed major depressive disorder, a history of bilateral carpal and cubital tunnel syndrome, and bilateral elbow pain and strain.⁷ Dr. Sookdeo noted that appellant related that while working for the employing establishment she experienced "aggravation of her depression due to social isolation, humiliation, and feelings of worthlessness."

On January 15, 2015 appellant described her history of injuries to her arms and wrists at work. She noted that her job as a lobby assistant aggravated her work injury and caused a "very painful attitude and demeanor." In a statement dated January 17, 2015, appellant related that she experienced depression and stress in June and July 2011 because of harassment by management, pain from her injuries, and loss of sleep.

On March 26, 2015 appellant denied that she refused suitable work. She maintained that she experienced major depression as a consequence of her carpal and cubital tunnel syndrome. Appellant advised the employing establishment on March 26, 2015 that she could not return to the lobby assistant position offered January 2014 due to a "mental crisis."

⁵ In a decision dated April 18, 2014, OWCP denied appellant's claim for compensation from November 1, 2013 to February 11, 2014. It found that she had not submitted medical evidence sufficient to show that she was disabled due to her work injury during this period.

⁶ OWCP also denied modification of its April 9 and May 14, 2013 decisions.

⁷ Appellant also submitted an initial evaluation from a chiropractor dated December 29, 2014. The chiropractor evaluated her to determine her need for therapy.

Appellant's March 31, 2015 request for reconsideration was received by OWCP on April 7, 2015. On April 22, 2015 she appealed the July 16, 2014 oral decision to the Board. In an order dated June 26, 2015, the Board dismissed appellant's appeal as untimely.⁸

By decision dated August 10, 2015, OWCP denied modification of its July 16, 2014 decision.

In a statement dated July 23, 2015, appellant related that she did not refuse to work but instead advised that she was sick due to major depression and unable to work as a lobby assistant due to her mental condition.

On August 13, 2015 appellant requested reconsideration. In a letter dated August 18, 2015, she related that she had two claims, one a consequential injury. Appellant noted that OWCP's August 10, 2015 letter referenced a chiropractor whom she had never visited. She advised that she had depression and physical problems that made it difficult to resume work. Appellant enclosed letters she sent to the employing establishment in October and November 2013 requesting work within her restrictions. She also resubmitted the August 30, 2013 report from the counselor and the September 2, 2013 report from Dr. Brown.

In a decision dated September 3, 2015, OWCP denied appellant's request for reconsideration as she did not submit evidence or raise an argument sufficient to warrant reopening her case for further merit review under section 8128(a).

On appeal appellant references the October 24, 2013 internal memorandum of OWCP deleting her emotional condition claim and indicating that it would adjudicate it as a consequential injury of the current file number xxxxxx772. She asserts that she did not refuse to return to work and that OWCP failed to notify her that she had 30 days to accept the job or show cause for refusal prior to terminating her compensation. Appellant also maintains that she asked the employing establishment for light-duty work due to her depression. She relates that OWCP mixed up file numbers and failed to consider all the evidence. Appellant requests vocational rehabilitation.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁹ OWCP terminated appellant's compensation under section 8106(c)(2) of FECA,¹⁰ which provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee is not entitled to compensation.¹¹ To justify termination of compensation, it must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such

⁸ *Order Dismissing Appeal*, Docket No. 15-1127 (issued June 26, 2015).

⁹ *Linda D. Guerrero*, 54 ECAB 556 (2003).

¹⁰ *Supra* note 1.

¹¹ 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

employment.¹² Section 8106(c) will be narrowly construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.¹³

Section 10.517(a) of FECA's implementing regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured by the employee, has the burden of showing that such refusal or failure to work was reasonable or justified.¹⁴ Pursuant to section 10.516, the employee shall be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.¹⁵

Before compensation can be terminated, however, OWCP has the burden of demonstrating that the employee can work, setting forth the specific restrictions, if any, on the employee's ability to work, establishing that a position has been offered within the employee's work restrictions and setting for the specific job requirements of the position.¹⁶ In other words, to justify termination of compensation under 5 U.S.C. § 8106(c)(2), which is a penalty provision, OWCP has the burden of showing that the work offered to and refused by appellant was suitable.¹⁷

Once OWCP establishes that the work offered is suitable, the burden shifts to the employee who refuses to work to show that the refusal or failure to work was reasonable or justified.¹⁸ The determination of whether an employee is physically capable of performing a modified assignment is a medical question that must be resolved by medical evidence.¹⁹ OWCP procedures state that acceptable reasons for refusing an offered position include medical evidence of inability to do the work.²⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral tenosynovitis of the wrists, bilateral lateral epicondylitis, and a right ulnar nerve lesion under file number xxxxxx772. It also accepted that she sustained left carpal tunnel syndrome under file

¹² *Ronald M. Jones*, 52 ECAB 190 (2000).

¹³ *Joan F. Burke*, 54 ECAB 406 (2003).

¹⁴ 20 C.F.R. § 10.517(a); *see supra* note 12.

¹⁵ *Id.* at § 10.516.

¹⁶ *See Linda Hilton*, 52 ECAB 476 (2001).

¹⁷ *Id.*

¹⁸ 20 C.F.R. § 10.517(a).

¹⁹ *Gayle Harris*, 52 ECAB 319 (2001).

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5(a)(3) (June 2013).

number xxxxxx921 and bilateral carpal tunnel syndrome under file number xxxxxx682. OWCP combined the cases under master file number xxxxxx772.

Appellant underwent carpal tunnel releases in 1999 and 2000, a right cubital tunnel release in December 2011 and a left cubital tunnel release in February 2012. She returned to work on January 28, 2013 as a lobby assistant.

Appellant stopped work on April 15, 2013. She alleged that she sustained a stress-related condition as a consequence of her accepted employment injury. In a December 2, 2013 decision, OWCP found that appellant had not established that she sustained either an employment-related recurrence of disability beginning April 15, 2013 or a consequential emotional condition claim. In a decision dated April 18, 2014, it denied her claim for compensation for total disability from November 1, 2013 to February 11, 2014.

OWCP's procedures provide that if a claimant returns to work and then stops work and files a claim for compensation, and OWCP has not issued a formal loss of wage-earning capacity determination, it must initially determine whether she has established a recurrence of disability prior to terminating compensation for refusal of suitable work.²¹ OWCP adjudicated appellant's claim for compensation after she stopped work on April 15, 2013 but found that she had not established either a recurrence of disability beginning that date or a consequential emotional condition. It subsequently determined that the lobby assistant position offered by the employing establishment on April 18, 2014 was suitable and terminated her wage-loss compensation after she refused the position. OWCP thus properly complied with its procedures by adjudicating appellant's request for disability compensation after she stopped work before terminating her compensation for refusing suitable work.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based upon her refusal to accept a suitable position within her medical restrictions. In a work restriction evaluation dated October 31, 2012, Dr. Patel found that appellant did not perform repetitive wrist and elbow movements more than four hours per day. He further found that she could lift up to 30 pounds and or push and pull up to 60 pounds. On November 28, 2012 Dr. Alexander, the second opinion physician, found that she could work full time in a light-duty position with restrictions on reaching or reaching overhead more than four to six hours per day, performing repetitive wrist and elbow movements more than three hours per day, or pushing, pulling, and lifting up to 20 pounds for three hours per day. He further found that she could kneel and climb two to three hours per day. On January 11, 2013 Dr. Patel reviewed and concurred with Dr. Alexander's work restrictions.

The employing establishment again offered appellant her prior position working as a lobby clerk on April 18, 2014. The position required intermittent standing and walking, lifting less than 20 pounds or within her restrictions, limited bending, stooping, and twisting, and limited overhead activity. The employing establishment advised OWCP that appellant would not use a keyboard. The position was within the restrictions set forth by Dr. Patel, her attending

²¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Abandonment of a Suitable Job*, Chapter 2.814.8(b)(3)(a) (June 2013).

physician, and Dr. Alexander, the OWCP referral physician. The Board thus finds that the offered position was suitable.

On August 30, 2013 Ms. Reed, a licensed counselor, discussed appellant's difficulties with depression and suicide attempts. The report of a counselor, however, does not constitute competent medical evidence as a counselor is not considered a physician under FECA.²²

In a report dated September 2, 2013, Dr. Brown diagnosed major depressive disorder and opined that it was reasonable that appellant's loss of function and pain would result in depression. She did not address appellant's work abilities and thus her opinion is of little relevance to the issue at hand.

In an October 15, 2013 work restriction evaluation, Dr. Barnwell diagnosed carpal tunnel syndrome. He found that appellant could work four hours a day for the next month lifting up to 10 pounds performing no repetitive duties. Dr. Barnwell did not provide any rationale for his finding that her work restrictions increased or provide an opinion on the relevant issue of whether she could perform the duties of a lobby assistant offered in April 2014.²³

In accordance with the procedural requirements of section 8106(c), OWCP advised appellant on June 3, 2014 that it found the position offered on April 18, 2014 suitable and provided her the opportunity to accept the position or provide reasons for her refusal within 30 days. Appellant did not respond within the time allotted. The Board finds that OWCP followed established procedures prior to the termination of compensation under section 8106(c) of FECA.

Subsequent to OWCP's termination of compensation, appellant submitted a December 17, 2014 report from Dr. Sookdeo. Dr. Sookdeo diagnosed major depressive disorder, bilateral carpal and cubital tunnel syndrome by history, and bilateral elbow pain and strain. She advised that appellant believed that she aggravated her depression working at the employing establishment. Dr. Sookdeo did not address the issue of her ability to perform the offered position of lobby assistant. Additionally, she did not provide an independent opinion linking appellant's depression to her work duties. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.²⁴

On appeal appellant questions why OWCP adjudicated her emotional condition claim as a consequence of her current claim. She also notes that she asked the employing establishment for modified work due to her depression and requests vocational rehabilitation. Appellant also indicated that OWCP mixed up evidence in other claim numbers. The Board's jurisdiction, however, extends jurisdiction is limited to reviewing final decisions of OWCP.²⁵ The relevant

²² 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

²³ Medical conclusions unsupported by rationale are of diminished probative value. See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

²⁴ *Earl David Seale*, 49 ECAB 152 (1997).

²⁵ 20 C.F.R. § 501.2(c).

issue before the Board is whether appellant refused an offer of suitable employment under section 8106(c).

Appellant contends that she did not refuse suitable work as OWCP did not notify her that she had 30 days to accept the job or have her compensation terminated and did not consider all the evidence. OWCP, informed her in a letter dated June 3, 2014 that it had found the position of lobby assistant suitable and that she had 30 days to accept the position or provide reasons for her refusal. It further advised appellant of the penalties for refusing suitable work. The June 3, 2014 letter was properly addressed and there is no evidence that it was returned as undeliverable. Consequently, the letter is presumed to be received under the mailbox rule.²⁶

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 1

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,²⁷ OWCP's regulations provide that 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.²⁸ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.²⁹ 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.³⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.³¹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.³² While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.³³

²⁶ See *D.P.*, Docket No. 15-1325 (issued February 18, 2016); *James A. Gray*, 54 ECAB 277 (2002).

²⁷ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

²⁸ 20 C.F.R. § 10.606(b)(3).

²⁹ *Id.* at § 10.607(a).

³⁰ *Id.* at § 10.608(b).

³¹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

³² *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

³³ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

ANALYSIS -- ISSUE 2

As discussed, OWCP terminated appellant's wage-loss compensation as she refused an offer of suitable work. On August 13, 2015 appellant timely requested reconsideration of the August 10, 2015 decision. The underlying issue is whether she can perform the duties of lobby assistant offered by the employing establishment.

On reconsideration, appellant contended that her depression and physical condition prevented her from returning to work. Her lay opinion, however, is not pertinent to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.³⁴

Appellant maintained that she asked the employing establishment in October and November 2013 for work within her restrictions. The relevant issue, however, is whether she refused the April 2014 position offered by the employing establishment. Evidence or argument that does not address the particular issue involved does not warrant reopening a case for merit review.³⁵

Appellant asserted that OWCP referenced a chiropractor that she had not visited in its August 10, 2015 decision. OWCP indicated that she received treatment on December 29, 2014 from a chiropractor. The record supports that appellant received physical rehabilitation on that date from a chiropractor or physical therapist with a similar name, though the signature is unclear. OWCP properly found that this evidence was not probative and thus any error in identifying the medical provider does not affect the disposition of the claim.

Appellant resubmitted the August 30, 2013 counselor's report and the September 2, 2013 report from Dr. Brown. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³⁶

As 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 present new and relevant evidence not previously considered, she did not meet any of the necessary regulatory requirements and is not entitled to further merit review.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation benefits effective July 16, 2014 as she refused an offer of suitable work under 5 U.S.C. § 8106(c) and properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

³⁴ See *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

³⁵ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

³⁶ See *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 3 and August 10, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 12, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board