



## **ISSUE**

The issue is whether OWCP properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

Appellant, a 46-year-old practical nurse, filed a traumatic injury claim on August 11, 2010 alleging that she sustained an injury on December 4, 2009 in the performance of duty. She explained that, while she was trying to pick up a bandage from the floor, she fell out of a defective chair and onto her right knee.

OWCP sent appellant an initial development letter on August 18, 2010, notifying her that the evidence she submitted was insufficient to establish her claim. In particular, it noted that she should submit a medical report with a diagnosis of her condition and a physician's opinion explaining how the alleged incident caused the diagnosed condition. Appellant was also requested to submit further evidence explaining how the incident occurred. She was afforded 30 days to submit the requested evidence; however, no further evidence was received.

By decision dated September 21, 2010, OWCP denied appellant's claim. It found that the December 4, 2009 incident occurred as alleged, but that she had not submitted medical evidence to substantiate that she sustained an injury as a result of this incident.

Appellant filed a request for reconsideration on February 2, 2011, but did not submit any evidence.

On February 16, 2011 OWCP denied appellant's request for merit review. It found that she had not submitted any new legal argument or evidence in support of her claim.

## **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), to require OWCP to reopen a case for merit review, the evidence or argument submitted by a claimant must:

- (1) show that OWCP erroneously applied or interpreted a point of law,
- (2) advance a relevant legal argument not previously considered by it or
- (3) constitute relevant and pertinent evidence not previously considered by OWCP.

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements OWCP will deny the application for review without reviewing the merits of the claim.

**ANALYSIS**

Appellant requested reconsideration on February 2, 2011 but did not submit any further argument or evidence in support of her request. She therefore failed to show that OWCP erroneously applied or interpreted a point of law, did not advance any legal argument not previously considered, and did not submit evidence which constituted new and relevant evidence not previously considered by OWCP.

Appellant did not meet the requirements of 20 C.F.R. § 10.606(b) and accordingly her request to reopen her case for further reconsideration on its merits was properly denied.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's traumatic injury claim and its refusal to reopen her case for a further review on its merits pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 16, 2011 is affirmed.

Issued: December 8, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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