

FACTUAL HISTORY

The case has previously been on appeal before the Board. The pertinent facts and history are hereinafter set forth.

On April 2, 2003 appellant, then a 55-year-old mechanical engineer, filed an occupational disease claim alleging that she sustained neuron sarcoidosis and skin sarcoidosis as a result of the environmental conditions in the building where she worked. OWCP initially denied her claim on July 24, 2003 as it found that the evidence was insufficient to establish that the work exposure occurred as alleged and also for the reason that the medical evidence was insufficient to relate the cause of her medical conditions to her federal employment. By decision dated May 18, 2004, an OWCP hearing representative found that, although the evidence was sufficient to establish the claimed occupational exposure, the claim was denied as the medical evidence did not establish causal relationship. In response to appellant's request for reconsideration, by decision dated February 7, 2006, OWCP denied modification of the May 18, 2004 decision, finding that the medical evidence was insufficient to establish the causal relationship between her claimed work exposure and her diagnosed conditions. A subsequent request for reconsideration was denied by OWCP without merit review on March 1, 2007. Appellant filed an appeal to the Board. By decision dated October 10, 2007, the Board found that OWCP properly denied appellant's request for merit review. The facts as set forth in the Board's prior decision are hereby incorporated into this decision.²

Appellant filed a request for reconsideration before OWCP. By decision dated March 3, 2010, it denied modification of the earlier decisions.³

On March 9, 2010 appellant again requested reconsideration and submitted a November 15, 2007 report by Dr. Ernest P. Chiodo, a physician Board-certified in internal medicine, occupational medicine and public health and general preventive medicine. Dr. Chiodo opined that her sarcoidosis was due to exposure to metals including nickel during her federal employment. By decision dated June 10, 2010, OWCP determined that the new evidence was not sufficient to warrant modification of appellant's claim and that her claim remained denied. It found that Dr. Chiodo failed to provide a well-reasoned medical opinion explaining how her sarcoidosis was related to her federal employment.

On September 2, 2010 appellant again requested reconsideration. She submitted the results of a July 28, 2006 lymphocyte transformation test interpreted by Dr. Lisa Maier, a physician Board-certified in critical care medicine, internal medicine, occupational medicine and pulmonary disease. Dr. Maier noted a normal response to mitogen but an abnormal lymphocyte

² Docket No. 07-1170 (issued October 10, 2007); *petition for recon. denied*, Docket No. 07-1170 (issued August 28, 2008).

³ OWCP noted that the documents provided with the reconsideration request did not address the issue, *i.e.*, whether appellant's work exposure directly caused, aggravated, accelerated or precipitated her diagnosed sarcoidosis. It further noted that the documents were essentially repetitive in nature, cumulative or irrelevant and immaterial to the issue at hand, noting that, although some of the documents may pertain to appellant's sarcoidosis condition, none of the evidence provided an opinion regarding the etiology of appellant's condition in relationship to her exposure to toxins and metals at work.

proliferation to nickel sulfate. Appellant also resubmitted the November 15, 2007 report by Dr. Chiodo and a July 28, 2010 report by Dr. Leia F. Meyers, a Board-certified family practitioner, who indicated that appellant had been her patient since January 2006 and, as of May 2006, she had been treated for diabetes mellitus type II with nephropathy, neurosaroidosis, hypertension, elevated cholesterol, allergic rhinitis, osteoporosis, hypothyroidism and Common Variable Immunity Deficiency (likely due to sarcoid). Appellant contended that the evidence showed with medical certainty that her work environment caused her sarcoidosis.

By decision dated October 28, 2010, OWCP denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ 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.⁷

ANALYSIS

OWCP denied appellant's claim as it found that the medical evidence did not establish that appellant sustained a medical condition causally related to the accepted factors of her federal employment. On appeal, appellant makes various arguments that address the merits of her case. However, the last merit decision in this case was issued on June 10, 2010 at which time OWCP determined that new medical evidence, and in particular, the medical report of Dr. Chiodo dated November 15, 2007, was not sufficient to warrant modification of the prior decisions denying appellant's claim. As previously stated, this decision was issued over 180 days prior to the filing of this appeal and, accordingly, the Board does not have jurisdiction to review the merits of the case.⁸ The only issue before the Board is whether OWCP properly denied appellant's reconsideration request.

On reconsideration, appellant resubmitted the report of Dr. Chiodo which was already addressed in OWCP's decision of June 10, 2010. The Board has held that submission of

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *Id.* at § 501.3(e).

evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.⁹ With regard to the July 28, 2006 report by Dr. Maier and the July 28, 2010 report by Dr. Meyers, these reports do not address the relevant issue of whether appellant's work exposure caused her medical condition. Dr. Maier listed the results of a lymphocyte transformation test but did not address appellant's employment or the issue of causal relation. Dr. Meyers noted only that she was treating appellant for various specific medical conditions, but she also did not address the causal relationship to appellant's employment. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

Because appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP, it did not abuse its discretion in denying appellant's request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

⁹ *Edward W. Malaniak*, 51 ECAB 279 (2000); *S.J.*, Docket No. 10-1318 (issued February 3, 2011).

¹⁰ *Edward Mathew Diekemper*, 31 ECAB 224 (225 (1979); *D.B.*, Docket No. 10-2036 (issued May 13, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 28, 2010 is affirmed.

Issued: December 21, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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