



## **FACTUAL HISTORY**

This case has previously been before the Board. On August 3, 2010 the Board affirmed OWCP's September 28, 2009 decision, which accepted that appellant conducted route inspections in 2008 but denied his occupational disease claim on the basis that the medical evidence did not sufficiently establish that his work activity aggravated a preexisting spinal injury.<sup>2</sup> The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant's counsel requested reconsideration before OWCP on January 19, 2011 arguing that the prior disallowance of the claim was contrary to fact and law. He resubmitted a copy of an August 6, 2009 report from Dr. Hadijatou Jarra, a Board-certified family practitioner.

By decision dated February 4, 2011, OWCP denied appellant's reconsideration request, finding that he did not present legal contentions or pertinent new evidence warranting further merit review.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.<sup>4</sup> Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

## **ANALYSIS**

By decision dated August 3, 2010, the Board accepted that appellant conducted route inspections in 2008, but found that he did not meet his burden of proof as the medical evidence did not sufficiently demonstrate that these work factors aggravated a back condition. On January 19, 2011 appellant's counsel timely requested reconsideration before OWCP and submitted a legal contention and medical evidence.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. Counsel argued that OWCP's prior disallowance was contrary to fact and law. This contention lacked any assertion of an adequate legal premise having some reasonable color of validity.<sup>6</sup> Appellant neither showed that OWCP erroneously applied or

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<sup>2</sup> Docket No. 10-200 (issued August 3, 2010).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

<sup>6</sup> *See Charles A. Jackson*, 53 ECAB 671 n.14 (2002); *Daniel O'Toole*, 1 ECAB 107 (1948).

interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP.

Appellant included an August 6, 2009 report from Dr. Jarra that was previously received and considered by OWCP. The submission of evidence that repeats or duplicates evidence already included in the case record does not constitute a basis for reopening a case.<sup>7</sup> Because appellant failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

Counsel argues on appeal that the February 4, 2011 decision was contrary to fact and law. As noted, appellant did not offer a valid legal contention or pertinent evidence not previously considered by OWCP. Therefore, OWCP properly denied the request for reconsideration.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).