

leg mid-calf during the performance of duty on September 15, 2008. On September 16, 2008 she stopped work and sought medical treatment.

By decision dated November 3, 2008, OWCP denied the claim, finding that appellant did not submit sufficient factual and medical evidence to establish that she sustained an injury in the performance of duty.

On November 24, 2008 appellant requested an oral hearing.

A hearing was held on April 29, 2009.

By decision dated June 3, 2009, an OWCP hearing representative found that appellant did not submit sufficient evidence to establish that she sustained an injury in the performance of duty on September 15, 2008 as a result of a spider biting her while she was sitting at her desk.

On May 25, 2010 appellant requested reconsideration, arguing that physicians were known to misdiagnose patients, which occurred in her situation. She submitted a notice with a description, image and warning about black widow spiders that was posted on a bulletin near her cubicle, a series of e-mail correspondence regarding spiders in her work area and two leave requests dated June 16, 2009.

By decision dated June 30, 2010, OWCP denied appellant's request for reconsideration finding that she did not submit relevant and pertinent new evidence, did not show that OWCP erroneously applied or interpreted a point of law, nor advanced a point of law or a fact not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of OWCP's decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.² OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.⁴ To be entitled to a merit review of OWCP's 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.⁵ When a claimant fails to

² 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the 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).

³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ 20 C.F.R. § 10.606(b)(2). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

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

On May 25, 2010 appellant requested reconsideration and argued that physicians were known to misdiagnose patients, which occurred in her case. She did not submit any evidence to establish that she was misdiagnosed or otherwise addressing the spider bite. Therefore, the argument is unsubstantiated and appellant failed to meet her burden of proof as she did not advance a relevant legal argument not previously considered by OWCP.

In support of her May 25, 2010 reconsideration request, appellant submitted a notice with a description, image and warning about black widow spiders, a series of e-mails regarding spiders in her work area and two leave requests dated June 16, 2009. The Board notes that submission of these documents did not require reopening her case for merit review. The issue was whether or not appellant established that she sustained an injury in the performance of duty on September 15, 2008 as a result of a spider bite at her desk. Although the evidence is new as it was not previously of record, it does not constitute relevant and pertinent evidence as it is irrelevant to the issue of fact of injury and is not based on a physician's rationalized medical opinion. The Board has held that the submission of evidence which does not address the particular issue involved in the claim does not constitute a basis for reopening a case for merit review.⁹ Consequently, the evidence submitted by appellant on reconsideration does not establish a basis for reopening the claim for a merit review. Thus, the Board finds that OWCP properly denied appellant's May 25, 2010 request for reconsideration.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁶ 20 C.F.R. § 10.608(b).

⁷ See *A.L.*, *supra* note 4. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ See *Edward Matthew Diekemper, id.*

CONCLUSION

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 appellant's claim for further consideration of the merits of her claim under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2011
Washington, DC

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

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

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