



## **FACTUAL HISTORY**

OWCP accepted that on September 29, 2009 appellant, then a 23-year-old letter carrier, sustained a left ankle sprain and lumbar sprain when she twisted her left leg while delivering mail.

In a July 21, 2010 report, Dr. Stanley Soren, a Board-certified orthopedic surgeon serving as an OWCP referral physician, determined that appellant ceased to have residuals of her September 29, 2009 work injury.

In a February 8, 2011 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 12, 2011 finding that she did not have residuals of her September 29, 2009 work injury after that date. It based its termination on the opinion of Dr. Soren.

In July 26 and August 9, 2011 letters, appellant asserted that she continued to have work-related residuals after February 2011. In a form completed on August 24, 2011 and received by OWCP on August 29, 2011, she requested reconsideration of OWCP's February 8, 2011 decision terminating her wage-loss compensation and medical benefits effective February 12, 2011.

After the issuance of OWCP's February 8, 2011 termination decision, appellant submitted a number of documents. In a January 14, 2011 report, Dr. Sheeraz Qureshi, an attending Board-certified orthopedic surgeon, noted that appellant continued to report neck pain and provided a diagnosis of neck pain. In a July 14, 2011 report, Dr. Jorge Farrat, an attending Board-certified family practitioner, reported findings on examination including the fact that appellant did not have tenderness of the back vertebrae. Appellant also submitted the findings of December 17, 2010 magnetic resonance imaging (MRI) scan testing of the cervical region and reports and administrative documents, dated between August 2010 and August 2011, regarding physical therapy sessions. The physical therapy documents were completed by attending physical therapists.

In a September 7, 2011 decision, OWCP denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> 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.<sup>3</sup> To be entitled to a merit review

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<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

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.<sup>4</sup> 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.<sup>5</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>6</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup> While a 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.<sup>8</sup>

### ANALYSIS

OWCP issued a decision on February 8, 2011 terminating appellant's wage-loss compensation and medical benefits. Appellant requested reconsideration of this decision in August 2011.

The Board does not have jurisdiction over OWCP's February 8, 2011 termination decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) to require OWCP to reopen the case for review of the merits of the claim. In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. Before OWCP and on appeal to the Board, she argued that her continued symptoms and need for physical therapy showed that she continued to have work-related residuals. The underlying issue in this case was whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective February 12, 2011 on the grounds that she did not have residuals of her September 29, 2009 work injury after that date. That is a medical issue which must be addressed by relevant medical evidence.<sup>9</sup>

A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit new and relevant medical evidence in this case.

In support of her reconsideration request, appellant submitted a January 14, 2011 report in which Dr. Qureshi, an attending Board-certified orthopedic surgeon, noted her cervical complaints. In a July 14, 2011 report, Dr. Farrat, an attending Board-certified family practitioner, reported findings on examination including the fact that she did not have vertebrae

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<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>7</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>8</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>9</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

tenderness. However, the submission of these reports does not require reopening appellant's case for merit review because they are not relevant to the underlying issue of the present case. Neither physician provided an opinion regarding whether appellant had residuals of her September 29, 2009 work injury after February 12, 2011.<sup>10</sup>

Appellant also submitted reports and administrative documents, dated between August 2010 and August 2011, regarding physical therapy sessions. The documents were completed by attending physical therapists and therefore would not constitute probative medical evidence.<sup>11</sup> The main issue of the present case is medical in nature and these documents would not be relevant to this issue, *i.e.*, whether the medical evidence supported the termination of appellant's wage-loss compensation and medical benefits.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>10</sup> Appellant also submitted the findings of December 2010 MRI scan testing of her neck, but the report did not contain any opinion on continuing work-related residuals.

<sup>11</sup> The Board has held that medical questions can only be resolved by medical opinion evidence and that the reports of a nonphysician cannot be considered by the Board in adjudicating such an issue. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). See 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2012  
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