

FACTUAL HISTORY

On April 27, 2011 appellant, then a 49-year-old bulk mail clerk, filed an occupational disease claim attributing her back, neck and arm problems to pulling, pushing and lifting at work. She first became aware of the condition and its relationship to her employment duties on March 3, 2011.

By correspondence dated May 3, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. She was advised as to the additional medical and factual evidence to submit and given 30 days to provide the requested information.

A March 30, 2011 duty status report² (Form CA-17) provided work restrictions and diagnoses of lumbar, cervical and shoulder pain.

An April 7, 2011 report from Dr. Philippe D. Vaillancourt, a treating Board-certified neurologist, listed physical findings and diagnosed cervicoradicular, lumbaradicular and shoulder joint pain, cervical degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis.

On May 5, 2011 Dr. Edward Firouztale, a treating osteopath, diagnosed cervical radiculopathy due to degenerative disc disease; lumbar radiculopathy due to disc herniation and degenerative disc disease; right shoulder pain and lumbar paraspinal muscles inflammatory fasciitis. He provided physical findings, medical and employment history. Dr. Firouztale reported that appellant's work required pulling, lifting and pushing up to 50 pounds.

A May 11, 2011 report from Dr. Vaillancourt reported pain management treatment, objective test findings, physical examination findings and diagnoses of cervicoradicular, lumbaradicular and shoulder joint pain, cervical degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis.

A June 1, 2011 duty status report³ (Form CA-17) provided work restrictions and diagnoses of lumbar, cervical and shoulder pain.

In a June 2, 2011 disability note, Dr. Firouztale noted that appellant was disabled from work due to a neurological condition.

By decision dated July 25, 2011, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that a back condition was causally related to her employment duties.

Subsequent to the denial of her claim, OWCP received an August 18, 2011 medical report from Dr. Keith Witt, a treating osteopath, who noted a February 6, 2009 injury date and

² The physician's signature on the form is illegible.

³ *Id.*

lumbar diagnosis. Appellant also submitted a July 29, 2011 anesthesia record from Brookhaven Medical Center and a September 6, 2011 disability note from Gina Sussi, a nurse practitioner.

On October 11, 2011 appellant requested reconsideration.

By decision dated November 22, 2011, OWCP denied appellant's request for reconsideration.⁴

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that 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.⁶ 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.⁷ 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.⁸

ANALYSIS

The only decision before the Board on this appeal is OWCP's November 22, 2011 nonmerit decision denying appellant's application for reconsideration of its July 25, 2011 decision concerning the denial of her occupational disease claim. Because more than 180 days has elapsed between the issuance of OWCP's July 25, 2011 merit decision and February 24, 2012, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the July 25, 2011 decision.⁹ Thus, the issue presented on appeal is whether appellant's October 11, 2011 reconsideration request met any of the criteria of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

⁴ The Board notes that, following the November 22, 2011 decision, appellant submitted additional evidence with her appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁵ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁶ 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁷ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁸ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁹ *Id.* at § 501.3(e).

The underlying issue is whether appellant has established a neck, back or arm injury causally related to her employment. Appellant's October 11, 2011 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. The only new evidence submitted by appellant are an August 18, 2011 ancillary medical report from Dr. Witt, a July 29, 2011 anesthesia record from Brookhaven Medical Center and a September 6, 2011 disability note. This evidence does not address the issue of whether the diagnosed conditions are causally related to the employment factors identified by appellant. As this evidence does not address the relevant issue of causal relationship, the Board finds that it is insufficient to reopen her claim for further merit review.¹⁰

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered; or constituted relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and, thus, OWCP properly declined to reopen her claim for further merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹⁰ *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *R.M.*, 59 ECAB 690 (2008); *D'Wayne Avila*, 57 ECAB 642 (2006); *Betty A. Butler*, 56 ECAB 545 (2005) (evidence that does not address the particular issue involved does not constitute a basis for reopening a claim).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 22, 2011 is affirmed.

Issued: August 9, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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