

FACTUAL HISTORY

This case has previously been before the Board. On November 18, 2010 the Board affirmed an August 26, 2009 OWCP hearing representative's decision. The August 26, 2009 decision affirmed a February 20, 2008 decision denying a claim for a recurrence of disability commencing January 2, 2007.² The history of the case provided by the Board in its prior decision is incorporated herein by reference.³

On February 17, 2010 Dr. Michael J. Crovetto, a treating Board-certified osteopathic family practitioner, noted that appellant sustained a work injury on January 25, 2010 to her right shoulder and diagnosed a rotator cuff tear and post-traumatic impingement.

On November 14, 2011 appellant's counsel requested reconsideration. In support of her request, appellant resubmitted the first page of a May 23, 2007 report from Dr. Jason M. Tarno, a treating Board-certified osteopath specializing in sports medicine, noting a history of the March 9, 2005 employment injury and summarizing medical reports that had been reviewed.

By decision dated November 21, 2011, OWCP determined that appellant's application for reconsideration and the evidence submitted was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ 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) submit 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

² Docket No. 10-240 (issued November 18, 2010).

³ On March 9, 2005 appellant, then a 46-year-old transportation security screener, sustained a traumatic injury to her right arm, neck and shoulder while in the performance of duty. OWCP accepted her claim for cervical, thoracic and shoulder strains. On October 4, 2007 appellant filed a claim for a recurrence of disability beginning January 2, 2007 due to her accepted March 9, 2005 employment injury. She noted February 12, 2007 as the date she first stopped work following her claimed recurrence.

⁴ 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 her own motion or on application.

⁵ 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).

⁶ 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

Appellant filed an application for reconsideration that did not show that OWCP erroneously applied or interpreted a point of law or advance a relevant legal argument not previously considered by OWCP. The underlying merit issue was a claim for a recurrence of disability. Appellant must submit evidence that is pertinent new and relevant to the issue.

The document from Dr. Tarno had been previously considered by OWCP. The Board finds this report is duplicative and does not constitute relevant and pertinent new evidence.⁸ Therefore, it is not sufficient to require OWCP to reopen the claim for consideration of the merits.

The record also contains a February 17, 2010 from Dr. Croveti in which he related that appellant sustained an injury to her right shoulder at work on January 25, 2010. Dr. Croveti did not address whether she sustained a recurrence of disability commencing January 2, 2007 causally related to the accepted March 9, 2005 employment injury. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Thus, Dr. Croveti's report is also insufficient to require OWCP to reopen the claim for consideration of the merits.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy any of the three regulatory criteria, noted above, for reopening a claim for merit review. Therefore, OWCP properly denied her request for reconsideration.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant a merit review of the claim.

⁷ 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Richard Yadron*, 57 ECAB 207 (2005); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ *L.H.*, 59 ECAB 253 (2007); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 21, 2011 is affirmed.

Issued: June 18, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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