



medical evidence to meet her burden of proof to establish that she sustained an injury causally related to factors of her federal employment. The facts and the history of this case are herein incorporated by reference.

The record included a copy of a June 22, 2009 report from Dr. Nitin A. Shah, a Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome, ulnar nerve compression neuropathy, cubital tunnel syndrome on the left elbow, degenerative disc disease at multiple levels, cervical spine C3-4, C4-5, C5-6, C6-7 and C7-T1 with bilateral cervical radiculopathy. Dr. Shah opined that appellant's cervical spine disease was an aggravation of coexisting conditions. He indicated that repeated use of the upper extremities accelerated and precipitated the underlying disease of the cervical spine, which was work related. Dr. Shah advised that it also made appellant's other conditions including her bilateral carpal tunnel syndrome and ulnar nerve neuropathy worse. The Board found that his report was insufficiently rationalized to establish causal relationship. The Board noted that there were several defects which included that Dr. Shah's report was brief and lacked medical rationale. Additionally, Dr. Shah did not address appellant's actual work and nonwork activities over the years 1972 to 1997. The Board also noted that it was unclear whether the opinion of the physician was based on an accurate or complete factual background. Furthermore, the medical summary provided to Dr. Shah by counsel was not of record in its entirety.

On June 24, 2011 appellant's representative requested reconsideration. She indicated that she was providing a copy of the medical summary that she provided to Dr. Shah. Appellant's representative requested that OWCP reconsider the probative value of Dr. Shah's report and issue a merit decision.

By decision dated July 25, 2011, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA, OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”<sup>3</sup>

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<sup>3</sup> 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

Appellant's representative disagreed with the denial of the claim and requested reconsideration on June 24, 2011. The Board does not have jurisdiction over the merits of the appeal and may only consider whether OWCP's July 25, 2011 decision properly denied appellant's reconsideration request without a merit review of the claim.<sup>5</sup> The underlying issue on reconsideration was whether she submitted sufficient medical evidence to establish an injury causally related to factors of her federal employment. Appellant did not provide any relevant and pertinent new medical evidence not previously considered as to whether she sustained an injury causally related to factors of her federal employment.

On reconsideration, appellant's representative provided a copy of a medical summary which she had previously compiled and provided to Dr. Shah. The Board notes that this evidence is not relevant to the issue of whether appellant sustained an injury in the performance of duty causally related to factors of her federal employment, as the issue is medical in nature and the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup> In this case, appellant's representative has merely summarized the medical record. Her summary would not constitute medical evidence as she is not a physician. Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by FECA will be accorded probative value. As the issue is medical in nature, this would not be relevant to the issue of causal relationship.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied her request for reconsideration.<sup>7</sup>

On appeal, appellant's representative contends that Dr. Shah's opinion was relevant. The Board notes that in its prior decision, it considered Dr. Shah's report and found that it was insufficient to establish appellant's claim. Rearguing the relevance of Dr. Shah's report is

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<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> See 20 C.F.R. §§ 501.2(c), 501.3.

<sup>6</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000)

<sup>7</sup> The Board notes that, subsequent to OWCP's July 25, 2011 decision, appellant submitted additional evidence to OWCP. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

insufficient to require a merit review.<sup>8</sup> Appellant's representative also requests that the Board direct OWCP to accept the claim and pay benefits. However, as explained, the Board does not have jurisdiction over the merits of the claim. It may only consider whether OWCP properly denied appellant request for reconsideration without conducting a merit review of the claim.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> See *C.N.*, Docket No. 08-1569 (issued December 9, 2008) (evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case).