



## **FACTUAL HISTORY**

On June 10, 2010 appellant, then a 43-year-old veteran's service representative, filed an occupational disease claim alleging the condition in her neck, arms, wrists and hands has been aggravated from excessive sitting at her desk to perform her job.

By decision dated August 4, 2010, OWCP denied appellant's claim. In an August 11, 2010 decision, it set aside its August 4, 2010 decision as new evidence was submitted which had been mistakenly filed with another claim. OWCP again denied appellant's claim on the grounds that appellant had not submitted medical evidence containing a medical diagnosis in connection with the incident and/or events other than pain, nor had she established a medical condition causally related to the alleged incident or events.

Appellant requested a hearing before an OWCP hearing representative and submitted new evidence, including a November 30, 2010 report, by Dr. Brian J. Stemp, a chiropractor. In this report, Dr. Stemp reviewed appellant's x-rays and determined that subluxations were present at levels C4-5, C5-6 and C6-7. He noted that appellant was complaining of neck pain, tightness and pulling of the cervicothoracic paraspinal muscles, neuralgia, tingling and numbness to the extremities and muscle weakness. Dr. Stemp opined that the symptoms from which appellant were suffering were a direct result of the injury she sustained on March 31, 2009.

In a March 8, 2011 decision, the hearing representative affirmed the August 11, 2010 decision denying appellant's claim. The hearing representative found that the medical evidence contained no reasoned statement to explain how the claimant's medical condition was related to work, especially given the inconsistent history of injury provided by the claimant to her medical providers.

By letter dated July 21, 2011, appellant requested reconsideration. In support of her reconsideration request, she submitted a March 31, 2011 report by Dr. Stemp wherein he noted that he has treated appellant for 10 years, that he reviewed appellant's records, x-rays and reports and noted that appellant's chief complaints consisted of cervical pain and muscle spasm with associated paresthesia affecting primarily her right arm extending in her hand. He listed his diagnosis as vertebral subluxation present at levels C4-5, C5-6, C6-7 and C7-T1, and noted that subluxations at these levels can cause the type of symptoms that appellant is complaining of as a result of the March 31, 2009 injury. He concluded that, within a reasonable degree of chiropractic certainty, the condition from which appellant is suffering is the direct result of the injury she sustained on March 31, 2009.

By decision dated October 17, 2011, OWCP denied appellant's request for reconsideration without reviewing the merits of the case.

## 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 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>

## ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In requesting reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law nor did she advance a relevant legal argument not previously considered by OWCP. Appellant did submit new evidence, *i.e.*, a March 31, 2011 report by her chiropractor, Dr. Stemp, wherein he discussed appellant's medical tests and reports. He noted appellant's complaints of cervical pain and muscle spasms and concluded that, within a reasonable degree of chiropractic certainty, the condition from which appellant was suffering was the direct result of the injury she sustained on March 31, 2009. Dr. Stemp's report mirrors his earlier report, which OWCP had already considered. More importantly, it failed to provide a rationalized opinion on causal relationship. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>6</sup>

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193. 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).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *T.M.*, Docket No. 11-1882 (issued March 27, 2012); *see also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 17, 2011 is affirmed.

Issued: May 25, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board