

FACTUAL HISTORY

On January 16, 1997 appellant, then a 29-year-old regular carrier, filed a traumatic injury claim alleging that on January 15, 1997 she was stopped at a stop sign when her postal vehicle was rear-ended by a private vehicle. OWCP accepted the claim for cervical strain and paid appropriate benefits. Appellant returned to a modified work assignment for eight hours a day.

On December 3, 2010 appellant filed a Form CA-7 claiming wage loss for the period June 28 to November 15, 2010. In a December 17, 2010 letter, OWCP noting that the specific hours of her limited-duty assignment were withdrawn effective June 28, 2010 as part of the National Reassessment Process (NRP) requested that she provide all current medical evidence including that which determined her work capability/restrictions. Appellant was afforded 30 days to provide the requested information.

In response, OWCP received medical reports from Dr. Rita N. Oganwu, a Board-certified internist. These included a January 16, 2011 duty status report and a February 11, 2011 report in which Dr. Oganwu noted that appellant was evaluated after her neck and back injury at work in 1997 and was seen by a rheumatologist, who assessed her frame as small and, thus, is unable to lift, pull, push weights over 10 pounds on a continuous basis. Dr. Oganwu also noted that appellant's last x-rays were negative.

By decision dated March 9, 2011, OWCP denied appellant's claim for compensation effective June 28, 2010. It found that the evidence of record failed to support disability during the period claimed as there was no medical report from her treating physician based on objective findings supporting the current need for work restrictions related to her original work injury of November 15, 1997.

On July 9, 2011 appellant requested reconsideration of the March 9, 2011 decision. Evidence submitted included a July 2, 1997 physical therapist report, a July 6, 1998 report of a magnetic resonance imaging (MRI) scan of the cervical spine and a June 27, 2011 report from Dr. Oganwu, which noted appellant has documented cervical radiculopathy on July 6, 1998 MRI scan which was found after her 1997 accident and that her restricted duty has continued since that time.

By decision dated July 21, 2011, OWCP denied appellant's reconsideration request on the grounds that her request was insufficient to warrant a review of its prior decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), 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.³ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three

³ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141 (2007).

requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁴ The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁵

ANALYSIS

On July 9, 2011 appellant requested reconsideration of OWCP's March 9, 2011 decision which denied her claim for compensation effective June 28, 2010. Her request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by OWCP. Thus she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit relevant and pertinent new evidence not previously considered by OWCP. The July 2, 1997 physical therapist report and the July 6, 1998 MRI scan of the cervical spine were previously of record. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁶ The June 27, 2011 medical report from Dr. Oganwu, while new, merely repeats or duplicates appellant's February 11, 2011 report regarding her need for light duty. As such, this report is not relevant and is insufficient to require a merit review of the claim.⁷

The evidence submitted by appellant did not show that OWCP erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by OWCP. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁸

On appeal, appellant states that she does not understand what evidence was needed. However, OWCP clearly advised her that to meet her burden of proof to receive a merit review she needed to provide relevant and pertinent new evidence not previously considered by OWCP. Appellant failed to meet her burden of proof.

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).

⁴ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495 (2008).

⁵ *See Daniel Deparini*, 44 ECAB 657 (1993).

⁶ *Id.*; *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

⁷ *Id.*

⁸ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

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

Issued: October 17, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board