

rationalized medical opinion to establish that appellant's chronic right shoulder condition and proposed right shoulder surgery as causally related to her employment duties.

FACTUAL HISTORY

This case was previously before the Board. In an April 4, 2012 decision, the Board affirmed a June 6, 2011 OWCP decision that found appellant did not establish a recurrence of a medical condition on June 14, 2009 causally related to her accepted employment injuries.² The facts and history relevant to the present appeal are hereafter set forth.³

In a July 16, 2012 letter, appellant, through her attorney, requested reconsideration before OWCP and submitted additional evidence. In a June 14, 2012 report, Dr. Horwitz noted that appellant had been under his care since a June 7, 2008 employment injury. He opined that her right rotator cuff impingement syndrome was caused by repetitive work duties and stressful maneuvers on a regular basis as a mail handler and necessitated subacromial decompression surgery. Dr. Horwitz's physical findings included subacromial bursitis, tendinitis, rotator cuff impingement syndrome and dysrhythmic range of motion. He noted that the chronic impingement syndrome had been resistant to conservative treatment. Dr. Horwitz advised that the proposed surgery was needed to decrease appellant's pain and increase her range of motion. He concluded that the expected outcome of the surgery was to make her more functional in her mail handler job.

In a July 26, 2012 decision, OWCP denied appellant's July 16, 2012 request for reconsideration. It found that Dr. Horwitz's report was duplicative and repetitious of his prior reports.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 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) constitute 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. 11-1931 (issued April 4, 2012).

³ OWCP accepted that on June 7, 2008 appellant then, a 57-year-old mail handler, sustained a sprain, impingement syndrome and rotator cuff tendinosis of the right shoulder as a result of pulling equipment at work. Appellant returned to work as a modified nixie effective June 9, 2008 and continued to receive medical treatment.

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 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ *Id.* at § 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 of the merits.⁷

ANALYSIS

By decision dated June 6, 2011, OWCP denied modification of its finding that the medical evidence was insufficient to establish that appellant sustained a recurrence of a medical condition on June 14, 2009 causally related to her accepted employment injuries. On April 4, 2012 the Board affirmed the June 6, 2011 decision. On July 16, 2012 appellant's attorney requested reconsideration. Appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument not previously considered.

On appeal, appellant's attorney contended that Dr. Horwitz's June 14, 2012 medical opinion was sufficiently rationalized to establish that her chronic right shoulder condition and the proposed right shoulder surgery were causally related to her employment duties.

Appellant did not submit relevant and pertinent new evidence not previously considered. The June 14, 2012 report from Dr. Horwitz, while new to the record, repeated his opinion from his prior reports of record which addressed the relationship between appellant's current right shoulder condition and proposed shoulder surgery to her mail handler work duties. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸ Thus, the Board finds that Dr. Horwitz's June 14, 2012 report is duplicative of that dated April 20, 2011 and is insufficient to warrant further merit review of appellant's claim.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her July 16, 2012 request for reconsideration.

For reasons stated, the Board finds that the evidence submitted by appellant in support of her request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

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 *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
Washington, DC

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

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

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