



## **FACTUAL HISTORY**

On May 3, 2010 appellant, then a 44-year-old lobby assistant, filed a claim alleging that she sustained injuries to her back and leg due to employment activities between June 30, 2009 and April 27, 2010.<sup>3</sup> She reportedly felt pain in her back and leg on April 27, 2010 when she lifted a file that was three to four inches thick. Appellant experienced pain from walking up and down, getting in and out of chairs, and stretching and bending all day while retrieving, lifting and placing filing folders in cabinets.

The employing establishment controverted appellant's claim, stating that she was limited to answering telephones and assisting walk-ins. It denied that she was required to file and insisted that whenever she handled a file, there were carts and other assistance available.

By decision dated September 27, 2010, OWCP denied appellant's claim on the grounds that she had failed to establish the fact of injury. Appellant failed to provide sufficient evidence to support her assertions that she engaged in the activities alleged to have caused her claimed injury.

On October 25, 2010 appellant requested an oral hearing.

In a statement dated November 2, 2010, appellant asserted that the employing establishment deliberately misrepresented her assigned duties, stating that she had been required to file, to process bond fees and to make deposits. She was repeatedly lifting and performing functions on the copy machine. Appellant submitted copies of emails related to her job assignments.

In a March 15, 2011 decision, an OWCP hearing representative affirmed the September 27, 2010 decision. He found that appellant failed to establish that her position was substantially more than sedentary or of a nature to be physically taxing to the point of causing a back injury.

On March 14, 2012 appellant requested reconsideration.

In an undated statement, appellant indicated that she had filed two additional claims for back injuries, which were accepted for back strain. She had been assigned a position as a lobby assistant following her June 30, 2009 injury. Appellant's duties were not limited to answering telephones and assisting walk-ins, but rather included lifting three to four-inch files, as well as the duties previously described.

In a letter dated May 15, 2012, appellant stated that she was submitting copies of emails and doctors' reports in support of her reconsideration request. The record does not include the referenced documents.

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<sup>3</sup> Appellant initially filed a notice of recurrence of disability relating to her March 1, 2005 claim (File No. xxxxxx839), which was accepted for back strain. OWCP converted her claim to an occupational disease claim because she alleged new injuries. Appellant has filed numerous other claims, including a June 30, 2009 traumatic injury claim (File No. xxxxxx628), which was also accepted for back strain.

By decision dated June 11, 2012, OWCP denied appellant's request for reconsideration, finding that the evidence and argument submitted were insufficient to warrant merit review.<sup>4</sup>

On appeal, appellant contends that OWCP issued its decision without medical documentation, which was unavailable at the time. She reiterates that her back condition was exacerbated by the requirements of her light-duty job.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. Consequently, 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). A claimant may obtain a merit review by submitting relevant and pertinent evidence not previously considered.<sup>7</sup> Appellant, however, did not submit the required new and relevant evidence. Although she indicated that she would be submitting copies of emails and physicians' reports, the record did not include any such evidence supporting her request for reconsideration. Appellant submitted only a May 15, 2012 letter and an undated statement, in which she repeated her assertions that her position as a lobby assistant required her to lift three to four-inch files, as well as the walking, stretching and bending duties previously described. As these contentions were previously made and considered by OWCP, they are cumulative and duplicative in nature.<sup>8</sup> The Board finds that appellant's letter and statement do not constitute relevant and pertinent new evidence not previously considered and, therefore, do not constitute a basis for reopening the case for a merit review.

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<sup>4</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its June 11, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

<sup>6</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>7</sup> *See supra* note 4 and accompanying text.

<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by OWCP. The Board, therefore, finds that OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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