

FACTUAL HISTORY

OWCP accepted that appellant, then a 37-year-old rural carrier, sustained a sprain of the neck, shoulder and upper arm in the performance of duty on March 6, 2010 and, subsequently, sustained a recurrence on January 3, 2011. It paid her appropriate medical and wage-loss compensation benefits.

Appellant submitted reports from Dr. John H. Sloan, a Board-certified physiatrist, dated August 30, 2011 through February 24, 2012 diagnosing headache, limb pain and weakness in the right arm, buttock pain not radiating to posterior leg, chronic back pain, work-related cervical and shoulder strain pattern, chronic neck and shoulder pain and opined that her conditions were “related to the alleged work-related injury.”

By decision dated June 21, 2012, OWCP terminated appellant’s medical and wage-loss benefits effective that same day on the grounds that the employment-related condition or disability had ceased.

On October 15, 2012 appellant requested reconsideration and submitted reports from Dr. Sloan dated April 10 through October 8, 2012 reiterating his diagnoses and opinions. In his September 17, 2012 report, Dr. Sloan reiterated his opinion that her conditions were “related to the alleged work-related injury.”

By decision dated November 14, 2012, OWCP denied appellant’s request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of OWCP’s decision as a matter of right, it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.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

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(3); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

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 will deny the application for reconsideration without reopening the case for review on the merits.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

In support of her October 15, 2012 reconsideration request, appellant submitted medical reports dated April 10 through October 8, 2012 from Dr. Sloan. The Board finds that submission of these reports did not require reopening appellant's case for merit review. As OWCP denied her claim based on the lack of supportive medical evidence and these reports repeat evidence already in the case record, they are cumulative and do not constitute relevant and pertinent new evidence. Therefore, they are not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Because she only submitted cumulative and repetitive evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.¹⁰

CONCLUSION

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

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *See A.L., supra* note 5. *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Id.* *See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ *See L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2013
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