

employing establishment controverted the claim and noted that the injury did not occur in the work area or work premises, as she had not reported for duty.

On November 16, 2011 OWCP advised appellant that additional evidence was needed to establish her claim and allowed her an opportunity to submit such evidence. It noted that the evidence was insufficient to establish that she experienced the incident as alleged or that she was in the performance of duty.

Appellant and the employing establishment submitted photographs and maps of the area around the employing establishment premises, e-mail correspondence and medical progress notes.

In a letter dated November 25, 2011, Maria Camareno-Aragon, an administrative assistant, controverted the claim as the injury did not occur in the performance of duty. She stated that the employing establishment did not own, lease or subsidize any of the parking areas, or any of the airport grounds. Ms. Camareno-Aragon noted that the closest available parking was in the Terminal A employee garage parking. However, she explained that she verified that appellant did not maintain a valid parking pass for the employee parking lots. Ms. Camareno-Aragon also indicated that the parking lot ticket booths and the location of the employing establishment were approximately 800 feet apart, and appellant's work area was 900 feet away. She noted that appellant was late for work and running when the injury occurred.

In a November 29, 2011 report, Dr. Josiah Ambrose, a Board-certified neurologist, noted that appellant sustained a left humerus fracture in a fall on October 2, 2011. He advised that appellant developed a radial nerve palsy from the injury. In a December 7, 2011 report, Dr. Liliana C. Sackett, Board-certified in occupational medicine, noted appellant's history of injury that she was rushing to get to work when she fell outside the airport terminal. She diagnosed a closed fracture of the left humerus, a left radial nerve injury and a left wrist drop. Dr. Sackett noted that appellant underwent open reduction internal fixation of the humerus and exploration/decompression of the radial nerve on October 4, 2011. Other medical records were also received.

By decision dated December 22, 2011, OWCP denied appellant's claim. It found that her injury on October 2, 2011 was not sustained in the performance of duty. It determined that the employing establishment did not maintain or monitor the parking facility where appellant parked and that it was open to the public. Furthermore, she did not park in the employee lot but rather chose to find her own parking instead of utilizing the employee parking area.

On October 30, 2012 appellant's representative requested reconsideration. He submitted copies of medical progress notes, diagnostic test reports, the November 29, 2011 report from Dr. Ambrose and a copy of the December 7, 2011 report from Dr. Sackett.

In a decision dated January 25, 2013, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [OWCP]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the December 22, 2011 denial of her claim for an injury in the performance of duty. She requested reconsideration on October 30, 2012. As noted, the Board does not have jurisdiction over the merits of her claim.

In support of her request, her representative submitted medical evidence. The Board finds that the new medical evidence is not relevant to the issue in the present case, *i.e.*, whether appellant was in the performance of duty when injured. The underlying issue involves whether the claimed injury occurred on the employing establishment premises such that it would be considered in the performance of duty. The new medical evidence is not relevant to this issue. The other medical evidence submitted was previously of record and considered. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.⁵

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, the evidence submitted by appellant on reconsideration does not satisfy

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

⁵ *Edward W. Malaniak*, 51 ECAB 279 (2000).

any of the regulatory criteria for reopening a claim for a merit review. Therefore, OWCP properly denied his request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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