

FACTUAL HISTORY

This case has previously been before the Board. On November 24, 2004 the Board issued an order granting remand and cancelling oral argument.³ The Director acknowledged that OWCP's initial decision denying appellant's claim was adjudicated without consideration of whether her injury occurred in the performance of duty.⁴ Following further development, OWCP accepted the claim for aggravation of degenerative disc disease at C5-6, C6-7 and C7-T1 with cervical radiculopathy and paid benefits. Appellant underwent surgical procedures for the cervical region in February 2000 and for the lumbar region in February 2002. Her employment terminated on June 15, 2000.

By decision dated January 8, 2009, OWCP authorized appellant's claim for compensation for the period June 16, 2000 through March 6, 2007. By decision dated October 28, 2009, it found that she was entitled to compensation for the period June 16, 2000 through November 18, 2008 but denied compensation subsequent to November 18, 2008. By decisions dated May 27, 2010 and June 6, 2011, OWCP denied modification of the October 28, 2009 decision.

On June 4, 2012 appellant, through her attorney, requested reconsideration. He argued that the medical reports of record provided sufficient rationale to establish that conditions causally related to the February 8, 1996 slip and fall disabled appellant from all work since November 18, 2008. In the alternative, counsel contended that a conflict in medical opinion arose as to the reason for her continuing disability. He contended that appellant also sustained a consequential aggravation of bilateral knee degenerative joint disease and that her bilateral total knee replacements contributed to her disability from work since November 18, 2008.

Appellant submitted an undated report by Dr. David A. Gooray, a Board-certified internist with a subspecialty in cardiovascular disease, previously received by OWCP on November 12, 2009. She also submitted a duplicative July 19, 2010 report by Dr. Brian G. Evans, a Board-certified orthopedic surgeon.

By decision dated September 13, 2012, OWCP denied appellant's request for reconsideration on the grounds that she did not submit new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁵ its 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.⁶ To be entitled to a merit review of an OWCP decision denying or

³ Docket No. 03-1650 (issued November 24, 2004).

⁴ Appellant filed a traumatic injury claim for degenerative disc disease related to a February 8, 1996 fall while walking to work "on the sidewalk in the vicinity of Lot 16 Parking lot."

⁵ Under section 8128 of FECA, 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).

⁶ 20 C.F.R. § 10.606(b)(1)-(2).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record,⁸ or 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

Appellant disagreed with OWCP's June 6, 2011 decision which found that there was insufficient evidence to establish that she was disabled subsequent to November 18, 2008 as a result of her February 8, 1996 work injury. The Board does not have jurisdiction to review the merits of the case. The sole issue is whether appellant's request for reconsideration met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

Appellant did not identify a specific point of law or establish that OWCP erroneously applied or interpreted a legal principle. She did not advance a new and relevant legal argument. In the June 4, 2012 request for reconsideration, appellant's attorney argued that the medical evidence of record established that her current conditions were causally related to the February 8, 1996 slip and fall injury and caused disability since November 18, 2008. He also argued for a conflict in the medical opinion evidence. The medical evidence upon which counsel's argument is premised was previously submitted and considered by OWCP and found insufficient to establish compensation for disability subsequent to November 18, 2008. While he also contends that appellant has consequential conditions that arose out of her work injury that contributed to her disability since November 18, 2008, she bears the burden of proof in such matter. OWCP has not issued a decision on whether any consequential conditions resulted from the November 18, 2008 work injury. Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law and she has not advanced a relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP, but appellant submitted no such evidence with her reconsideration request. She submitted duplicative medical reports from the physicians of record with her request for reconsideration. The Board finds that she did not meet any of the requirements for further merit review.¹⁰

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit

⁷ *Id.* at § 10.607(a).

⁸ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009). *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).

relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant advanced arguments pertaining to the merits of her case. The Board noted above that it only has jurisdiction over OWCP's September 13, 2012 nonmerit decision which denied her request for reconsideration and therefore is precluded from conducting a merit review. Appellant also submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹¹ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ 20 C.F.R. § 501.2(c).