



## **FACTUAL HISTORY**

On April 21, 1996 appellant, then a 34-year-old distribution clerk, filed an occupational disease claim alleging that the duties of her federal employment caused pain in her right shoulder and arm. Her claim was accepted for right shoulder tendinitis. Appellant stopped working in January 1999.<sup>3</sup>

On February 10, 2009 OWCP referred appellant to Dr. Jeffrey A. Wunder, a Board-certified physiatrist, for a second opinion examination, which was scheduled for March 6, 2009. On February 18, 2009 appellant informed it by telephone that she would not attend the scheduled appointment because Dr. Wunder's office was located too far from her home. She did not attend the March 6, 2009 second opinion examination.

On March 10, 2009 OWCP proposed to suspend appellant's compensation benefits due to her failure to report for the scheduled examination with Dr. Wunder. Appellant was informed that she had 14 days to provide valid reasons for her failure to attend the examination and that, if she failed to show good cause, her entitlement to compensation would be suspended pending attendance and full cooperation.

In a statement dated February 28, 2009, appellant indicated that the March 6, 2009 appointment had been cancelled by "OTC Medical Services" on February 17, 2009 because her attending physician had stated that she was unable to travel the long distance to the appointment. In a letter dated March 17, 2009, she informed OWCP that she was in no condition to travel the required distance to Dr. Wunder's office. Appellant stated that her treating physician would confirm that fact and that there were other specialists within 25 miles of her home who could perform the examination.

On March 25, 2009 Janet Lok of QTC Medical Services stated that she did not cancel appellant's appointment with Dr. Wunder, but rather she advised appellant to contact the claims examiner to discuss her concerns.

By decision dated March 27, 2009, OWCP finalized the proposed suspension of benefits under 5 U.S.C. § 8123(d) effective March 25, 2009 due to appellant's failure to attend or cooperate with the second opinion examination.

On April 23, 2009 appellant requested a review of the written record. In a letter dated April 23, 2009, she stated that she was not trying to obstruct the second opinion examination. Appellant reiterated that she was unable to travel the 378 miles (6 1/2 hours) to his office.

Appellant submitted a January 6, 2009 work capacity evaluation from Dr. Patrick Brown, Board-certified in family medicine, reflecting that she was disabled from work. She also submitted a Mapquest report (and map) reflecting the distance between her residence in Scottsbluff, NE and Dr. Wunder's office in Greeley, CO to be 176.78 miles.

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<sup>3</sup> This case has previously been before the Board. In a June 14, 2004 decision, the Board reversed an April 3, 2003 decision terminating appellant's compensation for refusing an offer of suitable work. Docket No. 04-153 (issued June 14, 2004).

In a decision dated October 22, 2009, OWCP's hearing representative affirmed the March 27, 2009 decision, finding that there was no medical evidence of record to support appellant's inability to travel the distance to Dr. Wunder's office.

On October 15, 2010 appellant requested reconsideration. In a 10-page statement, she reiterated her contention that she was unable to travel the distance required to attend the second opinion examination with Dr. Wunder and that OWCP had acted unreasonably in requiring her to do so, given the fact that there were qualified physicians in her commuting area. Appellant submitted copies of Board decisions, which she argued established that OWCP had erred in its prior decision. She submitted a copy of the previously-submitted map to Dr. Wunder's office; advertisements for physicians in her local commuting area; and a September 16, 2010 note, bearing an illegible signature, recommending that she see a Dr. Arnold, a physiatrist in Scottsbluff.

By decision dated January 19, 2011, OWCP denied appellant's reconsideration request, finding that the evidence submitted was insufficient to warrant modification of its prior decision.

On January 13, 2012 appellant submitted a request for reconsideration. In support of her request, she submitted a statement dated January 13, 2012 reiterating her contention that OWCP acted unreasonably in sending her to a second opinion physician located a great distance from her home. Appellant argued that as there were a few physiatrists in Scottsbluff, NE, it was not logical or reasonable to require her to travel to Greeley, CO for an examination. She also discussed Board decisions previously cited and reviewed by OWCP, claiming that the January 19, 2011 decision was wrong because the claims examiner misapplied the law. Appellant submitted a duplicate of the previously submitted September 16, 2010 note, bearing an illegible signature, referring her to Dr. Arnold.

By decision dated February 16, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> 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; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> 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.<sup>6</sup> When a claimant fails to meet one of the above standards, OWCP will deny the

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> *Id.* at § 10.607(a).

application for reconsideration without reopening the case for review on the merits.<sup>7</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

### ANALYSIS

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

Appellant's January 13, 2012 request for reconsideration did not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered. Appellant merely reiterated arguments previously made and 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 be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case.

In addition to her personal statement, appellant submitted a duplicate of the previously-submitted September 16, 2010 note, bearing an illegible signature, referring her to a Dr. Arnold. The Board finds that this document is cumulative and duplicative in nature,<sup>9</sup> and thus does not constitute relevant and pertinent new evidence not previously considered.<sup>10</sup> Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her January 13, 2012 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 pursuant to 5 U.S.C. § 8128(a).

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<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</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).

<sup>10</sup> *See Susan A. Filkins*, 57 ECAB 630 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2013

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board