



## **FACTUAL HISTORY**

On August 30, 2011 appellant, then a 60-year-old nurse, filed an occupational disease claim alleging pain in her left shoulder and arm with tingling and numbness in her fingers as a result of her federal duties. Her job involved repetitive movements, such as cleaning patients, changing beds, hanging IVs, transporting patients and repositioning patients. The employing establishment controverted the claim. It noted that appellant had been temporarily detailed to a mostly administrative role with minimal patient lifting or repositioning.

In support of her claim, appellant submitted the results of a July 27, 2011 magnetic resonance imaging (MRI) scan, an August 10, 2011 duty status report and an April 15, 2011 memorandum by the employing establishment with regard to the duration of temporary light-duty assignments.

By decision dated October 4, 2011, OWCP denied appellant's claim. It found that she did not establish a causal relationship between the accepted factors of her employment and her left arm condition. In a decision dated April 30, 2012, an OWCP hearing representative affirmed the denial of appellant's claim.

By letter dated May 9, 2012, appellant requested reconsideration. She resubmitted the July 27, 2011 MRI scan report, August 10, 2011 duty status report and August 15, 2011 memorandum of the employing establishment. In a February 27, 2012 letter, Dr. Arlon H. Jahnke, a Board-certified orthopedic surgeon, advised that she was seen in his office on February 22, 2012 and that she could return to work on February 25, 2012 with restrictions of no lifting over 10 pounds and no reaching above shoulder level. She also submitted a May 9, 2012 duty status report from Dr. Jahnke, who listed her work restrictions.

By decision dated January 16, 2013, OWCP denied reconsideration without conducting a merit review.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3).

<sup>4</sup> *Id.* at § 10.608(b).

### **ANALYSIS**

In the present case, 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. The July 27, 2011 MRI scan, the August 10, 2011 duty status report and the April 15, 2011 employing establishment document were previously of record and considered by OWCP in the October 4, 2011 decision. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>5</sup> The remaining evidence is not pertinent to the issue of whether appellant established a causal relationship between the accepted factors of her employment injury and her diagnosis. The duty status report of May 9, 2012 and the February 27, 2012 letter of Dr. Jahnke address only her work restrictions; neither addresses causal relationship.

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 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 denied appellant's request for further merit review of her claim.

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<sup>5</sup> See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 16, 2013 is affirmed.

Issued: July 24, 2013  
Washington, DC

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

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

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