

FACTUAL HISTORY

On July 28, 2011 appellant, then a 39-year-old letter carrier, completed a traumatic injury claim (Form CA-1) alleging that on October 12, 2010 she was involved in a motor vehicle accident while in the performance of duty. She injured her neck, back and legs. By decision dated October 13, 2011, OWCP denied the claim, finding that the employment incident was not established as alleged.

Appellant requested a hearing, which was held on March 13, 2012. By decision dated June 6, 2012, the hearing representative found that the October 12, 2010 motor vehicle accident was established. Appellant received treatment for cervical strain.¹ The hearing representative found that no disability was established and no additional condition to her leg, back or foot were established as employment related.

By letter dated June 19, 2012, appellant, through her representative, requested reconsideration. She submitted an April 3, 2012 report from Dr. Darshan Shah, a Board-certified emergency medicine specialist. The report was previously submitted on April 23, 2012 and reviewed by the hearing representative in the June 6, 2012 decision.

In a decision dated November 15, 2012, OWCP found that the application for reconsideration was insufficient to warrant a review of the merits of the claim. On November 26, 2012 it received a November 20, 2012 letter from counsel requesting a hearing on the November 15, 2012 decision. In a letter dated December 4, 2012, appellant again requested reconsideration and resubmitted the April 3, 2012 report from Dr. Shah.

By decision dated December 6, 2012, OWCP denied appellant's request for a hearing. It found that she previously had requested reconsideration and was not entitled to a hearing as a matter of right. OWCP stated that the hearing request was further denied as the case could equally well be addressed by submitting new evidence with a request for reconsideration.

In a decision dated December 10, 2012, OWCP denied the December 4, 2012 application for reconsideration. It found that the application was insufficient to warrant merit review of the claim as the evidence submitted was previously reviewed

LEGAL PRECEDENT -- ISSUE 1

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations at 20 C.F.R. § 10.606(b)(2) provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(i) shows that OWCP erroneously applied or interpreted a specific point of law, (ii) advances a relevant legal argument not previously considered by OWCP or (iii) constitutes relevant and pertinent evidence not previously

¹ On June 8, 2012 OWCP accepted the claim for a neck sprain.

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

considered by OWCP.”³ Section 10.608(b) of Title 20 of the Code of Federal Regulations states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS -- ISSUE 1

OWCP issued a June 6, 2012 decision that found no employment-related disability due to the accepted cervical sprain and no additional employment-related conditions other than the cervical strain. Appellant submitted written applications for reconsideration dated June 19 and December 4, 2012. She did not discuss a specific point of law or advance a legal argument. With both the June 19 and December 4, 2012 applications for reconsideration, she submitted the April 3, 2012 report from Dr. Shah. The Board notes that this report had been previously submitted on April 23, 2012 and was considered by OWCP in the June 6, 2012 merit decision. The April 3, 2012 report from Dr. Shah is repetitious and does not meet the requirement of submitting relevant and pertinent evidence not previously considered by OWCP.⁵

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 relevant and pertinent evidence not previously considered by OWCP. Therefore OWCP properly denied the June 19 and December 4, 2012 applications for reconsideration without review of the merits of the claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.⁶ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁷ OWCP’s regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁸

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994). In the present case the “merits” of the claim would be the termination of compensation effective October 13, 2011.

⁵ Evidence that repeats or duplicates that already of record has no evidentiary value. *See Freddie Mosley*, 54 ECAB 255 (2002).

⁶ 5 U.S.C. § 824(b)(1).

⁷ 20 C.F.R. § 10.615.

⁸ *Id.* at 10.616(a).

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.⁹ This includes the situation where a claimant requests a second hearing on an issue. There is no provision in FECA for more than one hearing on the same issue.¹⁰ If a request for a second hearing is made, appellant is not entitled as a matter of right, but OWCP must exercise its discretion in determining whether to grant a hearing.¹¹

ANALYSIS -- ISSUE 2

Appellant submitted a request for a hearing before an OWCP hearing representative on November 2, 2012. The record establishes, however, that appellant previously had a hearing on March 13, 2012 and had requested reconsideration on June 19, 2012. As noted, there is no provision for a second hearing. OWCP regulations also provide that a claimant must not have previously requested reconsideration. Therefore, appellant was not entitled to a hearing as a matter of right.

When a claimant has previously requested reconsideration, or requests a second hearing on the issue, OWCP must exercise its discretionary authority to grant or deny the hearing request. In this case OWCP considered the issue and found it could be equally well addressed by submitting new and relevant evidence with an application for reconsideration. This is a proper exercise of OWCP's discretionary authority.¹² The Board finds that OWCP did not abuse its discretion in denying appellant's hearing request.

CONCLUSION

The Board finds that OWCP properly denied appellant's June 19 and December 4, 2012 applications for reconsideration without reviewing the merits of the claim for compensation. The Board further finds that OWCP properly denied appellant's request for a hearing.

⁹ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁰ *John S. Baldwin*, 35 ECAB 1161 (1984).

¹¹ *Id.*

¹² *See Lawrence C. Parr*, 48 ECAB 445 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 10 and 6 and November 15, 2012 are affirmed.

Issued: July 5, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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