



## **FACTUAL HISTORY**

On August 3, 2011 appellant, then a 57-year-old mail processing clerk, filed an occupational claim (Form CA-2) alleging that she sustained cervical and shoulder injuries causally related to repetitive activity in her federal employment. She noted that the job duties included writing, computer entry, lifting, sorting and date stamping. Appellant described the injuries as C4-5 disc protrusion, left foraminal stenosis at C5-6 and bilateral trapezius myofascial pain syndrome.

With respect to medical evidence, appellant submitted reports from Dr. Matthew Pepe, a Board-certified orthopedic surgeon. In a report dated July 26, 2011, Dr. Pepe stated that appellant's examination was consistent with a possible recurrent left rotator cuff tear and he opined that the continued trapezial pain was part of appellant's initial work claims. In a report dated August 19, 2011, Dr. Wei Xu, a Board-certified physiatrist, provided a history and results on examination. He opined that appellant's trapezius pain was related to her previous injury to the shoulders.

By decision dated September 26, 2011, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

In a letter dated August 20, 2012, appellant, through her attorney, requested reconsideration. Counsel indicated that an additional report dated July 13, 2012 from Dr. Pepe was enclosed, and that such report represented a reasoned medical report on causal relationship between a cervical condition and federal employment. The record does not indicate that any additional medical evidence was received on reconsideration.

By decision dated November 21, 2012, OWCP denied the reconsideration request without reviewing the merits of the claim for compensation. It indicated that it had not received any additional medical evidence.

## **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 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 considered by OWCP."<sup>3</sup> 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the

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<sup>2</sup> 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").

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

As noted above, appellant must meet one of the requirements of 20 C.F.R. § 606(b)(2) to require OWCP to reopen the case for review of the merits of the underlying claim for compensation. A review of the evidence of record indicates that appellant did not meet any of the above requirements.

A showing that OWCP erroneously applied or interpreted a specific point of law is not present. Appellant cites a Board decision noting that a claimant has the burden of proof to submit probative medical evidence on causal relationship between a diagnosed condition and federal employment. She does not attempt to show that OWCP erroneously applied or interpreted this point of law. Moreover, appellant did not advance a relevant legal argument not previously considered by OWCP.

The basis for the denial of appellant's claim for compensation in the September 26, 2011 OWCP merit decision was that the medical evidence was insufficient to establish the claim. The August 20, 2012 application for reconsideration states that a new medical report from Dr. Pepe was being submitted. The record does not, however, contain any new medical evidence submitted with the application for reconsideration. Even if the claimant indicates an intent to submit additional evidence, the Board can only review evidence that was before OWCP at the time of its final decision.<sup>5</sup> There was no "relevant and pertinent evidence not previously considered by OWCP" submitted with respect to the medical issue as of November 21, 2012.

The Board accordingly 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. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for merit review.

On appeal, appellant argues that a report from Dr. Pepe submitted on reconsideration was sufficient to require OWCP to review the merits of the claim. As noted above, the record did not establish that OWCP had received new medical evidence as of November 21, 2012, the date of OWCP's final decision on appeal.

### CONCLUSION

The Board finds that OWCP properly denied the application for reconsideration without review of the merits of the claim for compensation.

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<sup>4</sup> *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.

<sup>5</sup> *See D.R.*, Docket No. 12-698 (issued October 24, 2012). 20 C.F.R. § 501.2(c)(1) provides that the Board's review of a case is limited to evidence that was before OWCP at the time of its final decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 21, 2012 is affirmed.

Issued: June 21, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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