

**United States Department of Labor  
Employees' Compensation Appeals Board**

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R.C., Appellant )

and )

DEPARTMENT OF HEALTH & HUMAN )  
SERVICES, FOOD & DRUG )  
ADMINISTRATION, Bethesda, MD, Employer )

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**Docket No. 12-1879  
Issued: March 21, 2013**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On September 5, 2012 appellant, through her attorney, filed a timely appeal from a June 13, 2012 merit decision and an August 7, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained a recurrence of disability from September 27 through November 15, 2011 causally related to her accepted June 22, 2009 employment injury; and (2) whether OWCP properly denied appellant's June 26, 2012 claim for reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant's counsel contends that the decision was contrary to fact and law.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that appellant, then a 50-year-old press officer, sustained neck, lumbar and right shoulder/upper arm strains as a result of a June 22, 2009 employment injury. She stopped work on June 23, 2009. Appellant received disability compensation. On October 7, 2009 she returned to light duty.

On January 22 and June 18, 2010 appellant sustained recurrences of the June 22, 2009 employment injury and stopped work again. OWCP also expanded her claim to include acquired hallux valgus and tibialis tendinitis. Appellant received disability compensation. On December 1, 2010 she underwent authorized right foot surgery. Appellant stopped work and received disability compensation. On February 22, 2011 she returned to light duty.

On May 23, 2011 appellant, along with a statement of accepted facts, was referred for a second-opinion examination to Dr. William I. Smulyan, a Board-certified orthopedic surgeon, for a follow-up evaluation to determine whether she was able to return to full duty. In a July 6, 2011 report, Dr. Smulyan reviewed her history, including the statement of accepted facts and noted that she underwent right foot surgery on December 1, 2010. He also reported that he had previously examined appellant on September 21, 2010 and found evidence of preexisting flat foot with hallux valgus with posterior tibial tendon dysfunction. Dr. Smulyan opined that her current conditions were aggravated by the July 22, 2009 employment injury and concluded that there was a causal relationship between her accepted injury and her current complaints. Upon examination, he observed well-aligned head, neck, spine and shoulders. Examination of the right foot and lower limbs revealed markedly antalgic gait and intact neurovascular status. Dr. Smulyan stated that radiographic studies demonstrated realigned vagus and well-healing hallux valgus deformity. He opined that appellant was able to work on a full-time basis, eight hours a day, on a purely sedentary basis without any periods of walking to exceed 10 to 15 minutes. Dr. Smulyan reported that she had not reached maximum medical improvement and would benefit from physical therapy.

In an August 5, 2011 report, Dr. Stuart D. Miller, a Board-certified orthopedic surgeon, related that appellant continued to experience pain and swelling in her foot following a December 1, 2010 surgery and noted that she was progressing very well. He stated that she was examined by Dr. Smulyan who thought she should return to work. Dr. Miller opined that appellant should slowly continue to reach an eight-hour day and noted that there may be a few days when she needs to remain off her feet for a short period of time.

In a handwritten August 5, 2011 duty status report, Dr. Miller authorized appellant to return to full duty on a sedentary basis with restrictions of no squatting, kneeling and climbing.

On September 13, 2011 appellant returned to full duty. She continued to receive medical and physical therapy treatment.

On October 7, November 2 and 15, 2011 appellant filed various claims for total disability compensation beginning September 27 through November 15, 2011. The employing establishment noted that she had not returned to work since September 27, 2011.<sup>2</sup>

By letter dated October 14, 2011, OWCP advised appellant that the evidence was insufficient to establish that she sustained a recurrence of her disability beginning September 27, 2011 and requested additional evidence to establish her claim.

On November 9, 2011 appellant filed a recurrence claim commencing on September 27, 2011. She explained that she had been on limited duty with restrictions for a number of days and had worked at home, but then returned to work with restrictions on bending, walking, lifting, running, standing and stooping. Appellant stopped work on September 27, 2011. The employing establishment checked “yes” that it made adjustments in her regular duties due to her injury-related limitation. It stated that it adhered to the physician’s orders and provided appellant with appropriate limited duty and alternative work assignments, but she did not always follow her limited-duty job offer assignments.

In an undated statement, appellant related that she had walked with a cane for the past eight months due to her December 2010 surgery and experienced pain, plantar fasciitis, swelling and difficulty walking. She explained that she favored her left side because she was not steady on her feet and this factor had exacerbated her shoulder, cervical and back issues. Appellant stated that walking from the parking lot to her office required her to carry a shoulder briefcase containing her laptop, work binder, other documents and lunch. She walked to and from her car to her office each day, which was roughly 4/10 to 5/10 of a mile and also had a long walk to the bathroom, kitchen and on-campus cafeteria. Appellant noted that, although she had a walking restriction for her work assignment, there were no accommodations for the other distances that she walked. She believed that walking these other distances with a cane and carrying a heavy briefcase, along with the complications created from her foot surgery and using a cane to walk, contributed to her current neck, shoulder, upper, middle and lower back pain.

In a September 27, 2011 work restriction note, Dr. Robert M. Saltzman, a Board-certified orthopedic surgeon, checked a box marked “no work” for the period September 27 through October 4, 2011.

In an October 4, 2011 disability note, Dr. Saltzman checked a box indicating that appellant may not work until her next visit on November 1, 2011.

In an October 28, 2011 duty status report, Dr. Saltzman noted that appellant worked as a public affairs specialist and complained of right shoulder and upper back pain. The report indicated that on June 22, 2009 she slipped on her left foot and pulled her back and leg muscles. Appellant was advised to return to full duty on November 1, 2011 with a walking restriction of up to one hour per day.

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<sup>2</sup> Appellant’s November 18, 2011 time analysis form indicated that she did not work from November 7 to 15, 2011 and worked eight hours each day from November 16 to 18, 2011.

In a November 1, 2011 work restriction note, Dr. Saltzman noted a date of injury of June 22, 2009 and stated that appellant was capable of sedentary work beginning November 18, 2011.

In a November 7, 2011 office note, Dr. Miller conducted a follow-up examination following appellant's posterior tibial tendon reconstruction in December 2010. He related that she had been out of work secondary to low back problems and believed that it was due to her altered gait. Dr. Miller recommended that appellant use an ankle brace from time to time and a boot if it really limited her. He opined that she could have an eight-hour workday but recommended that she continue to limit her standing and walking at work.

In a November 7, 2011 disability slip, Dr. Miller noted that appellant may return to work with continued restrictions and could work additional hours from home.

In a November 8, 2011 report, Dr. Saltzman examined appellant for complaints of right shoulder and upper back pain. He related that she had surgery on her right foot secondary to a work-related injury and continued to use a cane for many months. Dr. Saltzman explained that appellant developed upper back and shoulder pain because of her dependence on her upper extremities for support when she used her cane. Upon examination, he observed limited right shoulder motion and pain on resister scapular abduction and external rotation. Range of motion of the cervical spine did not cause symptoms to radiate to the shoulder or arm. Both upper extremities were neurovascularly intact. Dr. Saltzman noted some tenderness about the paraspinal muscles to the right side of the thoracic spine and some tenderness about the peri-scapular muscles on the right. He stated that appellant's right shoulder pain was improving and recommended limited use of the arm. Dr. Saltzman authorized her to return to sedentary-duty work in two weeks.

In a November 8, 2011 disability note, Dr. Saltzman stated that appellant had been under his care for right shoulder and upper back pain. He checked a box marked "no work" and requested that she be excused from work from September 27 to October 4, 2011.

In a November 9, 2011 statement, the employing establishment related various e-mails from appellant indicating that she would not be at work because of her back pain. It noted that she was released from a walking restriction in August 2011 and that she chose to carry a shoulder briefcase even though she was offered a roller briefcase with wheels. The employing establishment stated that there was no requirement for appellant to transport her government-issued laptop to and from the workplace.

In a November 21, 2011 disability note, Dr. Miller stated that appellant was released back to sedentary full-time work with no restrictions on October 1, 2011.

In a November 18, 2011 statement, appellant related that on June 22, 2009 she suffered multiple injuries to her neck, shoulder, back and right foot as a result of slipping on an overly waxed floor at work. She stated that OWCP took months to accept her claim, which caused her to exhaust all of her available sick and annual leave and also delayed approval of her surgery. She explained that, while recovering from surgery, she spent months in a hospital and underwent physical therapy to work her way up to using a cane and being able to walk again. Appellant

stated that, after months of overtaxing the left side of her body and having an altered gait, she experienced neck, shoulder, back, hip and knee pain. She noted that Dr. Saltzman outlined how the surgery on her foot and overdependence on the other side of her body led to her current conditions and that Dr. Miller also stated that her conditions were often seen following the type of surgery she received. Appellant believed that she submitted all the medical documentation required of her.

On November 22, 2011 the employing establishment advised OWCP that appellant returned to work on November 16, 2011.

Appellant was referred for another second-opinion examination. In a December 14, 2011 second-opinion examination report, Dr. Smulyan stated that she worked as a press officer and reviewed her history, including the statement of accepted facts. He noted that he previously examined appellant on July 6, 2011 and found that she was fit to work in a full-time sedentary capacity. Dr. Smulyan related that on September 27, 2011 she woke up with pain around her neck, back, right shoulder and arm. He noted that appellant had been out of work from September 27 to November 16, 2011 due to complaints of neck, back and right shoulder pain. Dr. Smulyan reviewed her duties as a press officer and stated that she carried her computer over her right shoulder when she attempted activities out of her office such as going to hearings on Capitol Hill. He reported that appellant's right shoulder pain worsened when she used her cane to assist her.

Upon examination, Dr. Smulyan observed that appellant's head and neck were held in the upright and midline positions. Flexion and extension were to 30 degrees and rotation was to 15 degrees bilaterally. Examination of the lumbar spine revealed that appellant stood fully erect and had a markedly antalgic gait. Trendelenburg test was negative. Examination of the right shoulder and upper limbs revealed that there was no deformity. Abduction was to 90 degrees on the right side and 120 degrees on the left. Dr. Smulyan also noted that radiographic studies of the cervical spine revealed a straightening of the cervical lordosis and narrowing of the intervertebral disc spaces at C4-5 and C5-6. Radiographic studies of the lumbar spine revealed osteophyte changes in the vertebral bodies of L1 through L5. Disc space heights were well preserved. Radiographic studies of the right shoulder demonstrated well-preserved glenohumeral and acromioclavicular joints with marked narrowing in the subacromial space anteriorly. Dr. Smulyan found evidence of supraspinatus tendinitis in the right shoulder and cervical and lumbar spondylosis. He stated that appellant was currently being treated for lumbar spondylosis and opined that there was no evidence of recurrent disability as a result of these conditions. Dr. Smulyan concluded that her work stoppage was not causally related to her condition and that her current condition was not caused by the use of a cane and altered gait. He authorized appellant to return to work in her previously described capacity.

In a decision dated January 5, 2012, OWCP denied appellant's recurrence of disability claim finding insufficient medical evidence to establish that she was disabled beginning September 27, 2011 as a result of the June 22, 2009 employment injury. It found that Dr. Smulyan's December 14, 2011 second-opinion report was well rationalized in determining

that her September 27, 2011 disability was not causally related to her accepted employment conditions.<sup>3</sup>

On January 18, 2012 appellant's counsel appealed the January 5, 2012 denial decision and requested a telephone hearing, which was held on April 4, 2012. Appellant was represented by counsel, Mary Ann Rini. She stated that when she first returned to work she initially worked from home but in late July or early August 2011 appellant began to go to work two or three days a week. Appellant explained that she drove to work and carried a laptop which weighed about 10 or 15 pounds, a purse, lunch and work binders to and from her workplace. She stated that she used a cane to walk as a result of the June 2009 injury and that the walk from her car to the office was a long distance that took her about 15 to 20 minutes. Appellant also walked a distance of 5 or 10 minutes throughout the day to go to meetings, lunch or the restroom and sometimes walked to other buildings on her campus.

In an October 4, 2011 report, Dr. Saltzman noted that appellant had a previous work injury and also sustained injuries to her foot and ankle. Appellant underwent foot surgery and had been using a cane. Dr. Saltzman opined that using the cane seemed to have exacerbated her back and right shoulder pain. The examination revealed limited motion of the right shoulder and cervical spine. Dr. Saltzman observed tenderness throughout the right side of appellant's upper back, about the scapula, right shoulder and cervical and thoracic spine. He stated that her right shoulder and upper back pain appeared secondary to a musculoligamentous cause.

In a November 1, 2011 report, Dr. Saltzman related appellant's complaints of right shoulder and upper back pain and noted that she used a cane after undergoing surgery on her right foot. He explained that, because of the continued use of the cane for many months and the dependence on her upper extremities for support, she developed upper back and shoulder pain. Upon examination, Dr. Saltzman observed limited right shoulder motion and pain on resisted scapular abduction and resisted external rotation. Range of motion of the cervical spine did not cause symptoms to radiate to the shoulder or arm. Dr. Saltzman noted some tenderness about the paraspinal muscles to the right side of the thoracic spine and some tenderness about the periscapular muscles on the right. He stated that appellant could continue to work and authorized her to resume sedentary-duty work in two weeks.

In an undated statement, the employing establishment responded to the April 4, 2012 hearing transcript. It pointed out that appellant was not released until October 1, 2011 and that in September 2011 she worked with medical restrictions. The employing establishment stated that her laptop weighed approximately 6.4 pounds and that there was no requirement for her to transport her laptop to and from the workplace. It noted that appellant walked approximately a total of 2/10 to 3/10 of a mile from her car to her office and back each day. The employing establishment reported that she was released from a walking restriction in August 2011 and currently had no restrictions on walking. It provided a timeline of appellant's work status after the June 2009 work-related injury and a map of her workplace, which included the various distances from the parking lot to her building and the other buildings in the area.

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<sup>3</sup> OWCP also pointed out that since her recurrence of disability was denied, any claims for wage-loss benefits were also formally denied for periods of total disability after this period of time.

By decision dated June 12, 2012, an OWCP hearing representative affirmed the January 5, 2012 denial decision. The hearing representative found that the medical evidence failed to establish that appellant's disability from September 27 to November 15, 2011 was causally related to the June 22, 2009 employment injury.

On June 26, 2012 appellant's counsel submitted a request for reconsideration. She resubmitted various medical reports previously on the record dated from July 29, 2009 to February 6, 2012.

In an undated statement, appellant responded to the employing establishment's statement regarding the April 4, 2012 hearing transcript. She stated that she was authorized to return to full duty on September 1, 2011 and not October 1, 2011. Appellant described the distances that she walked at work and also her various duties as a press officer. She related that she had to carry her briefcase with her laptop, shoulder bag, lunch, binders and also a work "Go Bag." Appellant requested that OWCP review Dr. Miller's reports as they address the ongoing issues with her foot.

In a decision dated August 7, 2012, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

OWCP regulations define the term a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>4</sup> OWCP's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.<sup>5</sup>

Where an employee, who is disabled from the job he or she held when injured returns to a light-duty position or the medical evidence establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history,

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Herman*, 38 ECAB 222 (1986).

that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained neck, lumbar and right shoulder strains and acquired hallux valgus and tibialis tendinitis as a result of a June 22, 2009 employment injury. It also accepted that on January 22 and June 18, 2010 she sustained recurrences of the accepted employment injury. On December 1, 2010 appellant underwent authorized foot surgery. She stopped work and returned to full duty on September 13, 2011. Appellant stopped work again on September 27, 2011 and returned on November 16, 2011. On November 2, 2011 she filed a recurrence of disability claim commencing on September 27, 2011 alleging that she continued to suffer from neck, shoulder and back pain as a result of the June 22, 2009 work-related injury. Appellant also submitted various disability compensation claims beginning September 27, 2011. The issue is whether she sustained a recurrence of total disability on September 27, 2011, causally related to the June 22, 2009 employment injury.

Appellant has not alleged a change in her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions. The Board finds that she has not met her burden of proof in establishing her claim.

The Board notes initially that OWCP's procedures recognize that if the alleged recurrence is less than 90 days after a return to light or full duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Therefore, in cases where recurring disability for work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.<sup>10</sup>

Appellant submitted medical reports and disability notes from Dr. Saltzman. The relevant reports are dated September 27 to November 8, 2011. In September 27, October 4 and November 8, 2011 disability notes, Dr. Saltzman checked a box marked "no work" and indicated

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<sup>7</sup> *Supra* note 5 at *Causal Relationship*, Chapter 2.805.2 (March 2011).

<sup>8</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>10</sup> *Supra* note 5 at Chapter 2.1500.6(a) (September 2003).



that appellant may not work from September 27, 2011 until her next appointment on November 1, 2011. In an October 28, 2011 duty status report, he authorized her to return to work with a walking restriction on November 1, 2011. In November 1 and 8, 2011 reports, Dr. Saltzman authorized appellant to return to sedentary work on November 18, 2011. Although he excused her from work until November 18, 2011, he did not provide any explanation on the cause of her inability to work beginning September 27, 2011. Dr. Saltzman fails to provide an explanation, based on objective medical findings and rationale, demonstrating why appellant's current conditions were disabling. He does not discuss a worsening of her accepted conditions. None of Dr. Saltzman's reports contain rationalized medical opinion evidence establishing that appellant sustained a recurrence of total disability on September 27, 2011.<sup>11</sup>

Appellant also submitted medical reports from Dr. Miller. In a November 7, 2011 report, Dr. Miller stated that she had been out of work secondary to low back problems and opined that it was due to her altered gait. He authorized appellant to return to work with continued restrictions. Although Dr. Miller notes that she was out of work due to low back problems, he also does not provide any objective findings which establish a change in the nature and extent of her back condition or explain why she was unable to perform her employment duties.<sup>12</sup> He fails to provide an opinion as to why appellant was totally disabled commencing September 27, 2011. Furthermore, the Board points out that Dr. Miller authorized her to return to work on November 7, 2011 with continued restrictions. Dr. Miller does not provide any medical evidence addressing appellant's inability to work from November 7 to 15, 2011. The additional medical evidence from him related to her medical condition either before or after the alleged September 27, 2011 recurrence and are not relevant to this claim. Thus, Dr. Miller's reports are insufficient to establish appellant's burden of proof.

On December 14, 2011 appellant underwent a second-opinion examination by Dr. Smulyan, who reviewed her history, including the statement of accepted facts and conducted a thorough examination. Dr. Smulyan noted that he had previously examined her and that she had undergone foot surgery on December 1, 2010 as a result of a June 22, 2009 employment injury. He related that on September 27, 2011 appellant woke up with pain around her neck, back, right shoulder and arm and reported that she had been out of work from September 27 to November 16, 2011. Dr. Smulyan concluded that there was no evidence that she sustained a recurrence of her medical condition and no evidence of recurrent disability as a result of her accepted conditions. He reported that appellant could return to work, with her previous restrictions. The Board finds that Dr. Smulyan's report is sufficiently well rationalized and based on an accurate background. He conducted a thorough examination and concluded that appellant's accepted conditions had not caused a recurrence of disability from September 27 to November 15, 2011. Accordingly, the Board finds that the medical evidence fails to establish that she sustained a recurrence of disability beginning September 27, 2011.

On appeal, appellant's counsel alleges that OWCP's decision was contrary to fact and law. The record reveals, however, that appellant did not submit sufficient medical evidence to meet her burden of proof. As previously noted, a recurrence of disability means an inability to

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<sup>11</sup> See *H.M.*, Docket No. 09-864 (issued November 6, 2009).

<sup>12</sup> *M.M.*, Docket No. 12-897 (issued October 12, 2012).

work after an employee has returned to work that is caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. Appellant has failed to provide sufficient medical evidence to establish a change in the nature and extent of her injury-related conditions or a change in the nature and extent of her job requirements, which would prohibit her from performing her employment duties after she returned to work.

Appellant may submit new evidence or argument with a written request for reconsideration 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>13</sup> OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district office.<sup>14</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup>

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.<sup>16</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>18</sup>

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<sup>13</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>14</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>15</sup> *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> *Id.* at § 10.607(a).

<sup>17</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## ANALYSIS -- ISSUE 2

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decisions dated January 5 and June 13, 2012, OWCP denied appellant's claim finding insufficient medical evidence to establish that she sustained a recurrence of disability beginning September 27, 2011. On June 26, 2012 appellant's counsel requested reconsideration. She resubmitted various medical reports previously of record. The Board finds that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>19</sup> The Board finds that the submission of this evidence did not require reopening appellant's case for merit review.

Appellant also submitted a narrative statement describing the materials she carried on her shoulder as part of her work duties and the distances she walked at work. OWCP denied her claim finding that the medical evidence failed to establish a recurrence of total disability. Appellant's statement about her work duties is not relevant and pertinent to the underlying issue in this case and is not sufficient to require OWCP to reopen her claim for consideration of the merits.<sup>20</sup>

Appellant did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously considered by OWCP. Because she did not meet any of the necessary requirements, she is not entitled to further merit review.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

## CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of total disability commencing September 27, 2011. The Board also finds that OWCP properly denied her June 26, 2012 request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>19</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

<sup>20</sup> *See James W. Scott*, 55 ECAB 606 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7 and June 13, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board