

FACTUAL HISTORY

On January 15, 2010 appellant, then a 51-year-old rural letter carrier, filed an occupational disease claim alleging that her cervical stenosis was due to factors of her employment. She indicated that she was first aware of her condition on December 17, 2009. Appellant attributed her condition to an extra high volume of bulk mail, a shortage of clerks and an increased volume of packages during the holiday immediately preceding her claim.

By decision dated April 5, 2010, OWCP denied the claim on the grounds that fact of injury was not established. It found the evidence insufficient to establish that the events occurred as alleged and there was no medical evidence which provided a diagnosis which could be connected to the claimed events.

On April 20, 2010 appellant requested a review of the written record before an OWCP hearing representative. By decision dated July 23, 2010, an OWCP hearing representative affirmed the April 5, 2010 decision. She found that appellant's description of her work duties differed significantly from that of the employing establishment. The hearing representative also found that none of the medical reports provided established a causal relationship between the diagnosed cervical stenosis condition and employment factors.

In an October 5, 2010 letter, appellant requested reconsideration and submitted additional evidence. By decision dated April 27, 2011, an OWCP hearing representative modified the prior decision to reflect that the medical evidence was insufficient to establish that the cervical condition was causally related to appellant's work activities.

In an April 23, 2012 letter, appellant, through her attorney, requested reconsideration of the April 27, 2011 decision. In an April 23, 2012 15-page statement, counsel noted appellant's work and medical history in relation to the claim and opined that the medical evidence, in particular Dr. Andrea S. Lamberson, a Board-certified family practitioner's, many reports of record, established causal relationship. Evidence previously of record which was resubmitted included a February 18, 2010 computerized tomography (CT) lumbar myelogram and reports from Dr. Lamberson dated September 2, 2010 and an undated letter listed as Exhibit 2.³

By decision dated August 28, 2012, OWCP denied appellant's request for reconsideration on the grounds no substantive legal questions were raised and there was no new and relevant evidence submitted to support causal relation.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁴ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or

³ In the letter noted as Exhibit 2, Dr. Lamberson opined that appellant sustained an exacerbation of cervical osteoarthritis due to the repetitive motions encountered at work -- bending, lifting, pulling, pushing, prolonged standing, twisting, which was a proximate or direct result from her reported work-related injury.

⁴ Under section 8128 of FECA, the 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).

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.⁵ 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.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

Appellant disagreed with OWCP's April 27, 2011 decision which denied her claim on the grounds that she did not establish causal relation. Thus, the issue presented on appeal is whether appellant's April 23, 2012 request for reconsideration met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

In her April 23, 2012 request for reconsideration and on appeal, appellant contended that the medical reports from Dr. Lamberson supported causal relationship. On appeal, she further contended that the medical evidence submitted on reconsideration was ignored, at least in part, by OWCP in its April 27, 2011 decision or were not given the weight required by law. Appellant, however, did not show that OWCP erroneously applied or interpreted a specific point of law. OWCP's April 27, 2011 decision denied appellant's claim on the grounds causal relationship was not established. It reviewed the medical evidence appellant submitted and found that the medical evidence was insufficient to establish causal relation as it was lacking medical rationale as to the mechanics of how particular work activities caused or exacerbated appellant's diagnosed condition. With regard to appellant's argument that Dr. Lamberson's reports established causal relationship, this argument and the medical reports submitted were previously considered by OWCP. It is well established that where the legal argument presented has no reasonable color of validity, OWCP is not required to reopen the case for merit review.⁷ Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but she did not submit any pertinent new and relevant medical evidence in this case. In support of her request for reconsideration, appellant submitted duplicative copies of medical reports previously considered by OWCP in its April 27, 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.⁸

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *Norman W. Hanson*, 45 ECAB 430 (1994).

⁸ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

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 constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under section 8128.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2013
Washington, DC

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

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

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