



back and numbness in her right leg causally related to factors of her federal employment. She attributed her condition to “working in an ergonomically incorrect environment.”

By decision dated March 25, 2011, OWCP denied appellant’s claim after finding that she did not factually establish that her workstation was not ergonomically correct. In a decision dated October 3, 2011, it denied modification of its March 25, 2011 decision. OWCP found that appellant had not submitted the required factual information. It further noted that she had not provided medical evidence containing a description of the identified work factors.

A request for reconsideration was filed on January 17, 2012.

In a decision dated May 4, 2012, OWCP modified its October 3, 2011 decision to find that appellant had factually established the occurrence of the work factor alleged to have caused her condition, but that she had not submitted rationalized medical evidence showing that she sustained a medical condition due to the identified work factor.

On August 14, 2012 appellant, by checkmark on a form, requested reconsideration. In a decision dated September 24, 2012, OWCP denied her request as she did not submit evidence or raise argument sufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128.

### **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 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> 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.<sup>4</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>5</sup>

The Board has held 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>6</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup> While the reopening of a case may be predicated

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides 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).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

<sup>7</sup> *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>8</sup>

### ANALYSIS

In the last merit decision dated May 4, 2012, OWCP denied appellant's occupational disease claim after finding that she had not submitted sufficient medical evidence to establish a condition causally related to the identified employment factor of working at an ergonomically-incorrect location. On August 24, 2012 she requested reconsideration.

As noted above, the Board does not have jurisdiction over the May 4, 2012 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her August 14, 2012 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. The underlying issue in this case is whether the medical evidence establishes that she sustained an occupational disease causally related to factors of her federal employment. That is a medical issue which must be addressed by relevant medical evidence.<sup>9</sup> A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence in this case.

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

On appeal appellant submitted new medical evidence. The Board has no jurisdiction to review new evidence on appeal.<sup>10</sup> Appellant can submit this evidence to OWCP and request reconsideration under 5 U.S.C. § 8128.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

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<sup>8</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>9</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>10</sup> *See* 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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