



## **FACTUAL HISTORY**

On April 24, 2012 appellant, then a 50-year-old manual clerk, filed a traumatic injury claim alleging that on April 13, 2012 she sustained tendinitis of the right wrist after lifting a heavy box. She stopped work on April 16, 2012 and returned to work on June 18, 2012.

In a statement dated April 24, 2012, appellant related that she felt a small amount of pain while at work on April 12, 2012. After she worked on April 13, 2012, she experienced significant pain the following two days while at home.

In a report dated May 30, 2012, Dr. Yehuda Kleinman, a Board-certified orthopedic surgeon, indicated that appellant provided a history of experiencing pain in her right wrist around a half hour after lifting a package. He diagnosed an “[e]xacerbation of quiesced in the wrist and hand arthritis....”

In response to OWCP’s request for additional information, appellant related that she was not initially aware that she had hurt her hand and “thought it was something else. Sometimes pain does [not] set in till much later.”

By decision dated August 6, 2012, OWCP denied appellant’s claim for a traumatic injury after finding that she had not established that the April 13, 2012 incident occurred at the time, place and in the manner alleged. It noted that in her statement she described feeling a minimal amount of pain at work but told Dr. Kleinman that she felt pain shortly after heavy lifting. OWCP further found that appellant had not submitted medical evidence sufficient to show that she sustained a diagnosed condition causally related to the alleged employment incident.

On April 25, 2013 appellant requested reconsideration. She resubmitted her statements describing her injury and medical reports dated April 21, May 30, June 4 and July 20, 2012. Appellant also submitted an April 25, 2013 duty status report describing the history of injury as feeling a pinching sensation after lifting a heavy box.

In a decision dated May 9, 2013, OWCP denied appellant’s request for reconsideration after finding that she had not submitted evidence or raised argument sufficient to warrant reopening her case for further merit review under section 8128. It found that the medical evidence submitted was irrelevant to the issue of whether she had factually established the occurrence of the April 13, 2012 work incident. OWCP noted that appellant had not explained the discrepancy between her description of the work injury and the history provided on the medical reports of record.

On appeal appellant argues that she did not initially realize that she hurt her hand until a few days later when she began to experience pain and her doctor informed her that she had injured her hand carrying a package. She described picking up a package on April 12, 2012 and feeling pain two hours later and then working the following day on April 13, 2012.

## 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 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

OWCP issued a decision on August 6, 2012 denying appellant's traumatic injury claim after finding that she did not factually establish the occurrence of the April 13, 2012 employment incident.<sup>9</sup> On April 25, 2013 appellant requested reconsideration.

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 April 25, 2013 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

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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 her 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).

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

<sup>9</sup> It appears that appellant may be claiming an occupational disease claim, as she indicated that she initially experienced pain on April 12, 2013. An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). As noted, however, the issue currently at hand is whether she has submitted sufficient evidence to show that OWCP improperly refused to reopen her case for further merit review under section 8128.

that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. 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 evidence in this case. She resubmitted her statements describing her injury and medical reports dated April 21, May 30, June 4 and July 20, 2012; however, evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup> Appellant also submitted a medical report dated April 25, 2013; however, the report is not relevant to the initial underlying issue of whether she submitted sufficient evidence to factually establish that the April 13, 2013 incident occurred at the time, place and in the manner alleged.<sup>11</sup> That is a factual issue that must be addressed by relevant factual evidence. Appellant did not submit any pertinent new and relevant factual evidence addressing this issue.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She 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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant described the circumstances surrounding her injury and submitted new medical evidence. As discussed, however, the issue is whether she either submitted relevant factual evidence to OWCP or raised an argument sufficient to warrant reopening her case for further merit review. The Board has no jurisdiction to review new evidence on appeal.<sup>12</sup> Appellant can submit this evidence to OWCP and requested reconsideration under 5 U.S.C. § 8128.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen the claim for further merit review under section 8128.

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<sup>10</sup> See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>11</sup> See *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that does not address the particular issue involved does not warrant reopening a case for merit review).

<sup>12</sup> See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 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