

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

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**J.M., Appellant**

**and**

**DEFENSE AGENCIES, DEFENSE FINANCE &  
ACCOUNTING SERVICE, Indianapolis, IN,  
Employer**

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**Docket No. 13-1382  
Issued: October 24, 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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 22, 2013 appellant, through counsel, filed a timely appeal from an April 5, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. 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 to review the nonmerit decision by OWCP.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup>5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The last merit decision of record was the Board's December 20, 2012 decision, which affirmed an April 27, 2012 OWCP decision. Docket No. 12-1336 (issued December 20, 2012). The Board's December 20, 2012 decision became final upon the expiration of 30 days from the date of issuance. 20 C.F.R. § 501.6(d).

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated December 20, 2012, the Board affirmed OWCP's April 27, 2012 decision finding that appellant failed to establish that her right de Quervain's tendinitis was causally related to factors of her employment as an accounting technician. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.<sup>3</sup>

On February 8, 2013 appellant, through counsel, requested that OWCP reconsider her claim. Submitted with her reconsideration request was a January 14, 2013 addendum report from Dr. Elemer Raffai, a Board-certified orthopedic surgeon, who stated that he reviewed her chart and believed that her right de Quervain's tendinitis was causally related to her work injury. Dr. Raffai stated that she had "repetitive motion-type injuries using computer keyboards and a mouse."

By decision dated April 5, 2013, OWCP denied appellant's request for reconsideration finding that she did not raise a substantive legal question or include new and relevant evidence.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by 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>4</sup> Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

## **ANALYSIS**

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen her case for further review of the merits. In her February 8, 2013 application for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. The underlying issue in this case was whether appellant's injury was causally related to the accepted factors of federal employment. That is a medical issue which

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<sup>3</sup>On June 2, 2011 appellant, then a 38-year-old accounting technician, filed an occupational disease claim alleging that she developed tendinitis of the right wrist as a result of typing from her federal employment duties.

<sup>4</sup>*D.K.*, 59 ECAB 141 (2007).

<sup>5</sup>*K.H.*, 59 ECAB 495 (2008).

must be addressed by relevant medical evidence.<sup>6</sup> The Board finds that appellant failed to submit new and relevant medical evidence addressing causal relationship.<sup>7</sup>

Appellant had previously submitted Dr. Raffai's February 13 and April 11, 2012 reports, which were reviewed and considered by the Board in its December 20, 2012 decision. The only medical evidence submitted with her February 8, 2013 appeal was his January 14, 2013 addendum. Dr. Raffai opined that appellant's right de Quervain's tendinitis was causally related to her work injury, noting that she had "repetitive motion-type injuries using computer keyboards and a mouse." While the January 14, 2013 addendum is a new report not previously considered, his opinion on causal relationship essentially repeated his previously submitted reports. Dr. Raffai's February 13, 2012 report, opined generally that appellant's right wrist de Quervain's tendinitis was caused by repetitive motion injury at work. The April 11, 2012 report stated that her "hand and wrist problem was related to weight, repetitive motion computer use work type of problem that she has due to excessive use at work." The January 14, 2013 addendum is repetitive of Dr. Raffai's prior stated conclusion. The Board has held that evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> As Dr. Raffai's January 14, 2013 report merely restated his previous conclusion, the Board finds that it is insufficient to reopen the case for review of the merits of appellant's claim.<sup>9</sup>

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

### CONCLUSION

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

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<sup>6</sup>See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>7</sup>*Helen E. Tschantz*, 39 ECAB 1382 (1988); *Ethel D. Curry*, 35 ECAB 737 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979); *E.g., Eladio Joel Abrera*, 28 ECAB 401 (1977).

<sup>8</sup>See *Angel L. Mercado*, Docket No. 05-605 (issued July 5, 2005); *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>9</sup>*Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2013  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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