

On appeal counsel argues that the decision is contrary to law and fact.

FACTUAL HISTORY

On February 11, 2013 appellant, then a 53-year-old information technology specialist, filed a traumatic injury claim alleging that on January 23, 2013 she injured her ankles, hips, back, limbs, and neck when she tripped over loose cables in her work area and fell.

In a February 28, 2013 letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide this information.

In a March 22, 2013 attending physician's report (Form CA-20), Dr. Magnus Ikhinmwin, a treating Board-certified internist with a subspecialty in nephrology, diagnosed acute neck, low back, right knee and bilateral ankle pain. He described the injury as occurring when appellant tripped and fell over cables in her work area on January 23, 2013. As a result of her trip and fall, appellant hurt her hips, limbs, neck and back, and twisted her ankles. Dr. Ikhinmwin checked "yes" to the question of whether the diagnosed condition was caused or aggravated by the January 23, 2013 incident. He noted that appellant's injuries and tenderness correlated with her description of the injury.

By decision dated March 30, 2013, OWCP denied appellant's claim on the grounds that fact of injury had not been established. It found the evidence of record was insufficient to establish that the incident occurred as alleged. OWCP also found that the medical evidence appellant submitted was insufficient to establish a firm medical diagnosis.

On February 3, 2014 appellant requested reconsideration. She did not submit any additional evidence.

By decision dated February 21, 2014, OWCP denied reconsideration. It found that appellant's request did not warrant merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ 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.⁵ When a claimant fails to meet one of the above standards, OWCP

³ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁴ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

On February 11, 2013 appellant filed a claim for traumatic injury, which OWCP denied by decision dated March 30, 2013. OWCP found that she failed to establish fact of injury as the factual evidence did not establish that the incident occurred as alleged. It also found that the medical evidence submitted failed to diagnose a firm medical condition as a result of the alleged January 23, 2013 incident. On February 3, 2014 appellant disagreed with OWCP's denial of her claim and requested reconsideration.

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her February 3, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument not previously considered by OWCP. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence not previously considered by OWCP, but appellant did not submit any evidence in support of her request.

The Board finds that as appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2014 is affirmed.

Issued: December 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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