

request for further review of the merits of his claim under 5 U.S.C. § 8128(a), finding the evidence submitted by appellant to be duplicative.

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁴

The Board notes that OWCP failed to consider the new medical report dated December 27, 2012 by Dr. Battersby. This report now countersigned by Dr. Battersby and submitted for the first time with appellant's reconsideration request, constituted new and relevant medical evidence. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review.⁵ The case shall be remanded to OWCP and, after any development deemed necessary, OWCP shall conduct a merit review of appellant's claim, pursuant to 5 U.S.C. § 8128(a) and issue an appropriate merit decision.⁶

² 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *See D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

⁶ Given the Board's disposition of the nonmerit issue of this case (the denial of appellant's merit review request), it is not necessary to consider the merit issue, *i.e.*, whether appellant submitted sufficient medical evidence to establish that he sustained a work-related injury on October 31, 2012. *See* 20 C.F.R. § 501.2(c).

IT IS HEREBY ORDERED THAT the June 7, 2013 decision of the Office of Workers' Compensation Programs is reversed and the case remanded to OWCP for further proceedings consistent with decision of the Board.

Issued: January 2, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board