

FACTUAL HISTORY

This case was previously before the Board. On April 16, 2001 appellant, then a 49-year-old group secretary, filed an occupational disease claim alleging that in August 2000 she first became aware that her right wrist, arm, and hand conditions were due to her employment duties. OWCP accepted the claim for right thumb tendinitis, which was later expanded to include right bicipital tendinitis, right forearm tendinitis, right *de Quervain's* tendinitis, right lateral epicondylitis, bilateral carpal tunnel syndrome, right shoulder region localized primary osteoarthritis and calcium deposit in right tendon and bursa. It authorized right carpal tunnel surgery, which was performed on July 27, 2004.

Appellant filed recurrence and disability claims for various periods.² On August 15, 2013 OWCP denied her claim for wage-loss compensation for the period December 30, 2012 to March 23, 2013, and denied reconsideration on March 3, 2014. Appellant appealed to the Board. By decision dated September 8, 2014, the Board affirmed the nonmerit OWCP decision dated March 3, 2014.³ The Board found that it properly refused to reopen appellant's claim for reconsideration of the merits as appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference.

Subsequent to OWCP's March 3, 2014 nonmerit decision, it received the following evidence. In a March 12, 2014 electrodiagnostic study, Dr. Michael E. Hebrard, an examining Board-certified physiatrist, diagnosed right C5-6 radiculopathy based on the nerve conduction study performed. The results of the study showed "right mid cervical paraspinal and the right brachioradialis muscles showed increased insertional activity" and that there was increased insertional activity in the muscles of the right biceps, right deltoid, and right triceps.

A March 17, 2014 x-ray interpretation of the right shoulder revealed no chronic abnormality.

In a July 23, 2014 progress note, Dr. Hebrard noted that OWCP had accepted tendon and bursa calcium deposit, *de Quervain's* tenosynovitis, lateral epicondylitis, carpal tunnel syndrome, bicipital tenosynovitis, acquired trigger finger, and localized primary shoulder osteoarthritis. He provided physical findings and noted appellant was medically retired.

A July 25, 2014 magnetic resonance imaging (MRI) scan showed intact glenohumeral joint and biceps-labral complex, distal supraspinatus full thickness tear with eight millimeters of retraction, and moderate lateral downsloping of the acromion causing mild bony impingement.

On October 23, 2014 counsel requested reconsideration on the grounds that new evidence had been submitted since the March 3, 2014 nonmerit decision of OWCP.

² By a December 12, 2005 decision, OWCP granted appellant compensation for six hours (three hours each for November 8 and 22, 2004) out of 25 hours of disability claimed for intermittent periods between November and December 15, 2004. In July 14, 2011, and January 12 and October 17, 2012 decisions, it denied compensation for intermittent periods of disability commencing January 30, 2011.

³ Docket No. 14-1015 (issued September 8, 2014).

By decision dated November 6, 2014, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ 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.⁶ 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.⁷

ANALYSIS

OWCP accepted appellant's claim for right thumb tendinitis, right forearm tendinitis, right *de Quervain's* tendinitis, right lateral epicondylitis, bilateral carpal tunnel syndrome, right shoulder region localized primary osteoarthritis, and calcium deposit in right tendon and bursa. Appellant filed claims for wage-loss compensation for the period December 30, 2012 to March 23, 2013, which OWCP denied by decision dated August 15, 2013. 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 on appeal 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 October 23, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a new and relevant legal argument not previously considered by OWCP.

A claimant may, however, obtain a merit review of an OWCP decision by submitting pertinent new and relevant evidence. The new evidence referenced by counsel includes a March 12, 2014 report and July 23, 2014 progress note by Dr. Hebrard, a March 17, 2014 x-ray interpretation, and a July 25, 2014 MRI scan. While these reports are new, they are not relevant to establishing appellant's disability from work for the claimed period. Dr. Hebrard's report and progress notes contain physical findings, but offer no opinion on disability for the period claimed by appellant. Similarly, the x-ray interpretation and MRI scan also offer no opinion disability for

⁴ 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.

⁵ 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).

⁶ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

the period claimed by appellant as it is diagnostic in nature. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁸

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 evidence not previously considered. 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 counsel's arguments are not substantiated.

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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2014 is affirmed.

Issued: April 13, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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

⁸ *M.E.*, 58 ECAB 694 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).