

FACTUAL HISTORY

This case was previously before the Board.² On January 13, 2014 appellant, then a 49-year-old administrative support assistant, filed an occupational disease claim alleging that she experienced neck and bilateral shoulder and arm pain and tingling in her fingers, legs, and knees as a result of daily computer key entry and processing documents.

In support of her claim, appellant submitted a June 17, 2013 report from Dr. Richard Mantell, a Board-certified internist, who examined her for complaints of neck, low back, shoulder, and hand pain. Dr. Mantell stated that she worked as an administrative support assistant and discussed her various job duties. He provided examination findings. Dr. Mantell reported that appellant's work involved repetitive movement of her arms, shoulders, neck, and low back. He opined that because of appellant's job duties and pain related to her work it seemed reasonable that the repetitive motions of her job contributed to her pain.

In a decision dated April 3, 2014, OWCP denied appellant's claim finding insufficient medical evidence to establish that appellant's conditions were causally related to her employment duties. By decision dated September 16, 2014, the Board affirmed OWCP's April 3, 2014 decision, finding that appellant did not meet her burden of proof to establish that her medical conditions were causally related to factors of her federal employment. The facts of the case, as set forth in the prior decision, are herein incorporated by reference.

On December 30, 2014 OWCP received appellant's request, through counsel, for reconsideration of the Board's September 16, 2014 decision.³

In a November 17, 2014 report, Dr. Mantell discussed appellant's complaints of pain in her neck, low back, and right hand along with numbness and tingling of the right upper extremity. He stated that she worked as an administrative support assistant whose duties involved repetitive movement of the arms, shoulders, neck, and low back, as well as sitting for long periods of time. Dr. Mantell reported that diagnostic studies revealed hypofunction of the right and left C7 and left C5 nerve roots. Upon examination of appellant's back, he observed mild-to-moderate tenderness at the bilateral trapezius and lumbar paraspinal musculature and intact sensation. Appellant's range of motion of the cervical and lumbar spines were decreased due to pain. Strength measures were 3/5 throughout the cervical and lumbar musculature. Dr. Mantell opined that based on appellant's account of her job duties and the pain related to her work it was his opinion that the repetitive motions of her job contributed to the pain of the cervical, lumbar, and carpal tunnel on the right hand. He recommended that appellant continue with injection therapy, physical therapy, and pain management treatments.

By decision dated March 30, 2015, OWCP denied appellant's request for reconsideration finding that her request did not meet any of the requirements for further merit review pursuant to

² Docket No. 14-1295 (issued September 16, 2014).

³ OWCP is not authorized to review Board decisions. Although the September 16, 2014 decision was the last merit decision, OWCP's April 3, 2014 decision is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

5 U.S.C. § 8128(a). It determined that Dr. Mantell's November 17, 2014 was repetitive and cumulative of his June 17, 2013 medical report that OWCP had previously considered.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district office.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated September 16, 2014, the Board affirmed the denial of appellant's claim and that she had failed to provide evidence that her medical conditions were causally related to her employment duties. On December 30, 2014 OWCP received her request for reconsideration. She submitted a November 17, 2014 report from Dr. Mantell who found that appellant's job

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

duties contributed to her cervical and lumbar pain and her right hand carpal tunnel syndrome. This evidence is insufficient to justify a merit review because it is repetitive of Dr. Mantell's June 17, 2013 report, which was previously considered. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰

On appeal counsel contends that the Board's September 16, 2014 decision was contrary to law and fact. The Board notes, however, that the evidence submitted failed to establish that OWCP erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by OWCP, and did not constitute new and relevant evidence. Because appellant did not meet any of the necessary requirements for reconsideration under 5 U.S.C. § 8128, she is not entitled to further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's December 30, 2014 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 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

¹⁰ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).