

(2) whether OWCP, in its September 22, 2014 decision, properly denied her request for further merit review of its finding that she was not entitled to a schedule award.

FACTUAL HISTORY

On June 4, 2009 appellant, then a 34-year-old letter carrier, filed an occupational disease claim alleging that she sustained aching and burning in her big toes causally related to factors of her federal employment. She did not stop work. Appellant's supervisor indicated that appellant was performing limited duty. OWCP accepted the claim for an aggravation of a mild bunion (hallux valgus) deformity of the bilateral great toes.³

OWCP previously accepted that appellant sustained a bilateral toe blister under file number xxxxxx048. It doubled that case into the current file number.

On June 30, 2010 Dr. Stacey L. Bielinski, an attending podiatrist, released appellant to return to her usual employment. On July 1, 2010 appellant returned to work without restrictions.

On March 6, 2012 appellant filed a claim for a schedule award. She submitted an impairment evaluation dated April 19, 2013 from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen found that appellant had four percent permanent impairment of each lower extremity due to Raynaud's disease.

By decision dated October 21, 2013, OWCP denied appellant's schedule award claim. It found that Dr. Allen's opinion was insufficient to support a schedule award as he rated her for a vascular condition which had not been accepted as employment related.

On April 26, 2014 appellant filed a notice of recurrence of disability and of a medical condition on March 14, 2014 causally related to her accepted employment injury. She stopped work on March 5, 2014 and returned to work on March 18, 2014.

On May 6, 2014 appellant requested reconsideration of the October 21, 2013 decision. She resubmitted a June 9, 2010 report from Dr. Bielinski attributing her mild bunion deformity and bilateral great toe neuritis to Raynaud's disease. The podiatrist advised that appellant's condition was due to her employment and that she needed to limit exposure to extreme temperature. In a report dated December 13, 2013, Dr. Bielinski requested that OWCP expand the claim to include Raynaud's disease.

By decision dated July 29, 2014, OWCP found that appellant had not established a recurrence of disability beginning March 14, 2014. It determined that she had not submitted sufficient medical evidence to demonstrate a change in her employment-related condition.

In a decision dated August 8, 2014, OWCP denied modification of its October 21, 2013 decision. It noted that it had denied appellant's schedule award claim because Dr. Allen rated

³ By decision dated August 19, 2009, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that she sustained a diagnosed condition as a result of the accepted work factors. In a decision dated December 14, 2009, an OWCP hearing representative vacated the August 19, 2009 decision and remanded the case for further development of the medical evidence.

her for a condition not accepted. OWCP found that the medical evidence was insufficient to show that it should expand her claim to include additional conditions.

On August 13, 2014 appellant, through a checkmark on an appeal request form, requested reconsideration of the July 29, 2014 decision. By decision dated September 3, 2014, OWCP denied her request as she did not submit evidence or raise an argument sufficient to warrant reopening her case for further review of its finding that she did not establish an employment-related recurrence of disability.⁴

On September 8, 2014 appellant, through a checkmark on an appeal request form, requested reconsideration of the August 8, 2014 decision. In a decision dated September 22, 2014, OWCP denied her request for reconsideration after finding that she did not raise an argument or provide evidence to show that it should reopen her claim for further merit review of its denial of her schedule award claim.

On appeal appellant questions why her case is now closed when her condition is unchanged and she is submitting the same evidence from her physician.

LEGAL PRECEDENT -- ISSUES 1 & 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ 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.⁶ 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.⁷ 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.⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The Board also has held that the submission of evidence which does not address the particular issue involved does

⁴ OWCP initially issued a decision dated August 26, 2014 denying appellant's request for reconsideration of its August 8, 2014 decision. It subsequently issued an amended decision on September 3, 2014 properly addressing her request for reconsideration of its July 29, 2014 decision.

⁵ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

not constitute a basis for reopening a case.¹⁰ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹¹

ANALYSIS -- ISSUES 1 & 2

On August 13, 2014 appellant requested reconsideration of OWCP's July 29, 2014 decision finding that she had not established an employment-related recurrence of disability. By decision dated September 3, 2014, OWCP denied her request to reopen her case for further merit review. On September 8, 2014 appellant requested reconsideration of an August 8, 2014 decision denying her claim for a schedule award. In a decision dated September 22, 2014, OWCP denied her request for further merit review of its denial of her schedule award claim. Both appellant's August 13 and September 8, 2014 requests for reconsideration are timely as they were received within one year of the July 29 and September 3, 2014 decisions. The question for determination is whether appellant's requests met at least one of the three standards for obtaining merit review.

Appellant's August 13 and September 8, 2014 reconsideration requests consisted only of a mark on an appeal request form indicating that she wanted reconsideration. She did not offer any argument or evidence in support of her requests. The requests 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 provide relevant and pertinent new evidence not previously considered by OWCP. Such bare requests are insufficient, on their face, to warrant a reopening of appellant's case.¹²

As appellant's reconsideration requests did not meet any of the standards for reopening her case, the Board finds that OWCP properly denied her August 13 and September 8, 2014 requests for further merit review under section 8128.

On appeal appellant questions why her case is closed given that she provided the same evidence from her physicians. As noted, the Board only has jurisdiction over OWCP's September 3 and 22, 2014 nonmerit decisions and therefore is precluded from reviewing the merits of her case.

CONCLUSION

The Board finds that OWCP, in its September 3 and 22, 2014 decisions, properly denied appellant's requests to reopen her case for further merit review under section 8128.

¹⁰ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹² *See L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 22 and 3, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 21, 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