



## ISSUE

The issue is whether OWCP properly denied appellant's October 1, 2014 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On March 24, 2014 appellant, then a 48-year-old customs and border patrol (CBP) officer, filed an occupational disease claim alleging that she sustained pain in her neck, upper back, and right arm while assigned to work "VACIS 1."<sup>3</sup> She stated that she felt a severe pain in her neck, upper back, and right arm and informed her shift supervisor. Appellant went home and then to urgent care the next day. She first became aware of her disease and realized it resulted from her employment on February 27, 2014. The record does not indicate that appellant stopped work.

In a letter dated April 29, 2014, OWCP advised appellant that no evidence was submitted to establish her claim. It requested a detailed description of the specific work factors that she believed caused her claimed injury and medical evidence to demonstrate that she sustained a diagnosed condition as a result of her employment duties.

On February 28, 2014 appellant was treated in urgent care by Dr. Emi Misao Latham, Board-certified in emergency medicine, who examined appellant for complaints of right neck, arm, and shoulder pain. Dr. Latham related that appellant had a previous injury when she strained her neck muscles while training at work. Upon examination, she observed no point tenderness along the cervical, thoracic, or lumbar spine. Dr. Latham noted palpable muscle spasm to the right trapezial area. She stated that appellant had right-sided trapezial muscle spasm that appeared to be an exacerbation of an old injury. Dr. Latham noted that it was unclear what exacerbated appellant's condition.

In a decision dated July 8, 2014, OWCP denied appellant's claim. It determined that she failed to describe the specific work factors that she believed caused or contributed to her claimed condition and the type of injury she claimed to have sustained.

On October 1, 2014 OWCP received appellant's request for reconsideration.

In a September 18, 2014 report, Dr. Marc R. Gottlieb, a chiropractor, noted appellant's complaints of discomfort and paresthesia in the upper thoracic, right cervical, and left thoracic dorsal areas. Upon examination he observed multiple subluxations with spasm, hypomobility, and end-point tenderness. Dr. Gottlieb noted moderate-to-severe spasm upon palpation of the muscles. He stated that appellant's prognosis was guarded and uncertain.

By decision dated December 18, 2014, OWCP denied appellant's request for reconsideration finding that her request did not meet any of the requirements for further merit review pursuant to 5 U.S.C. § 8128(a).

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<sup>3</sup> There is no further explanation in the record as to what "VACIS 1" entailed.

## LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>4</sup> 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 his or her right through a request to the district OWCP.<sup>5</sup>

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

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

## ANALYSIS

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

By decision dated July 8, 2014, OWCP denied appellant's claim finding that she failed to describe the specific work factors that she believed caused or contributed to her claimed condition and the type of injury she allegedly sustained. On October 1, 2014 it received her request for reconsideration. Appellant submitted a September 18, 2014 chiropractor report. The Board finds that this evidence is insufficient to review her case on the merits. This September 18, 2014 medical report does not mention or describe any of appellant's work factors.

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

<sup>5</sup> 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).

<sup>6</sup> *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).

<sup>7</sup> *Id.* at § 10.607(a).

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

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

The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

Appellant did not submit any factual evidence or narrative description of the employment factors that she believed caused or contributed to her condition. She did not therefore submit new and relevant evidence which would require OWCP to reopen her claim for merit review.

On appeal, appellant reviewed the medical treatment she had received and related that her job required that she stand, sit, twist, turn, bend, squat, and lift things that are heavy at all times. The Board notes that appellant on appeal is addressing the merits of her claim. As previously stated, the Board does not have jurisdiction to review the merits of her claim. Furthermore, it cannot review new evidence which was not presented to OWCP before it issued its final decision.<sup>11</sup> The Board can only review the December 18, 2014 nonmerit reconsideration decision to determine whether OWCP properly denied appellant's reconsideration request.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's October 10, 2014 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

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<sup>10</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> See 20 C.F.R. §§ 501.2(c)(1) and 501.3(e). See also *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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