



conditions causally related to factors of employment. She stated on the form that she sustained a medical condition as a result of repeatedly opening and closing heavy bay doors on vehicles.

By letter dated November 27, 2012, OWCP asked appellant to submit additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

By decision dated January 4, 2013, OWCP denied the claim, finding that appellant failed to submit a report from her treating physician which adequately described the work duties that allegedly caused her claimed conditions; therefore, she failed to submit sufficient evidence to establish fact of injury.

By letter dated January 14, 2013, appellant, through counsel, requested an oral hearing, which was held on April 10, 2013. On June 12, 2013 an OWCP hearing representative affirmed the January 14, 2013 decision.

In a report dated March 12, 2013, received by OWCP on June 24, 2013, Dr. Felix A. Almentero, Board-certified in physical medicine and rehabilitation, stated that he initially treated appellant on December 21, 2010 for right shoulder pain, which was radiating to the arm and right hand; he related these symptoms to a December 1, 2010 employment injury. He advised that she underwent a magnetic resonance imaging (MRI) scan of her right shoulder on April 27, 2010 which showed no evidence of rotator cuff or detached labral tear. Dr. Almentero stated that appellant was diagnosed with cervical root lesion and degeneration of cervical intervertebral disc and that she had a positive Spurling's test on examination. Appellant underwent an electromyogram and nerve conduction study of the upper extremities on December 20, 2010 because she was experiencing neck pain radiating to her right shoulder; this test showed no evidence of cervical radiculopathy. In a follow-up examination dated January 3, 2011, she reported having right shoulder pain.

Dr. Almentero advised that on February 10, 2011 appellant underwent an MRI scan of her cervical spine which showed cervical spondylitic and discogenic changes at C4-7 and disc herniation at C4-5 with extrusion of disc material. He administered cervical facet injections on March 3 and 31, 2011 which reduced her pain by more than 60 percent. Appellant underwent radiofrequency ablation at the right C5-6 and C6-7 levels on July 5, 2011, and radiofrequency neuro-ablation at C5-6 and C6-7 with rhizotomy of the medial branch of the dorsal C5-6, C6-7 on November 8, 2011. On March 12, 2012 she underwent x-rays of the lumbar spine which showed mild degenerative disc disease at L4-5, mild dextroconvex scoliosis, and no evidence of dynamic instability. Dr. Almentero advised that an MRI scan of the lumbar spine taken on March 12, 2012 showed degenerative disc disease at L4-5 and L5-S1, with disc bulging at L4-5 and mild bilateral foraminal narrowing and a small left paracentral disc protrusion at L5-S1 minimally indenting the left ventral thecal sac. Appellant underwent left-sided L4-5 and L5-S1 facet injections on May 24 and June 29, 2012.

Dr. Almentero asserted that appellant's condition was the result of soft tissue scarring and nerve root impingement. He advised that individuals who sustain such traumatic injury of the cervical spine, lumbar spine, and shoulders have a tendency to experience acute exacerbations of pain involving these areas at later dates; these episodes might be caused by minor or incidental trauma and might interfere with normal activities of daily living, as was the case with appellant. Dr. Almentero stated that such traumatic injuries may have also predisposed her to the premature development of osteoarthritis involving the cervical spine, lumbar spine, and right shoulder. He diagnosed cervical spondylitis, cervical facet syndrome, lumbar radiculopathy, and lumbar facet syndrome. Dr. Almentero advised that appellant's subjective signs and symptoms were within the normal limits of an average person subjected to this type of trauma and that the objective findings, including positive examination, and diagnostic tests, confirm the presence of these injuries. He opined that, after assessment of her condition, based on her history, complaints, examinations, test results, lack of previous symptoms, and his professional experience with similar cases, the above-mentioned injuries were directly and causally related to the work-related incident which occurred on December 1, 2010. Dr. Almentero stated that in all likelihood these areas would be permanently weakened and that appellant would experience future exacerbations of her condition; he opined that future arthritic degenerative changes of the cervical spine and lower extremities might result as a direct result of this injury.

By letter dated June 24, 2013, counsel requested reconsideration.

By decision dated July 17, 2013, OWCP denied modification of the January 4, 2013 decision.

By letter dated August 23, 2013, counsel requested reconsideration.

In an August 22, 2013 report, Dr. Almentero essentially reiterated the findings of his March 12, 2013 report. He indicated that the August 22, 2013 report was an amended version of the March 12, 2013 report and attributed appellant's claimed conditions to the long term effect of her work duties rather than a previous traumatic injury. Dr. Almentero reiterated that she was initially treated on December 21, 2010 for right shoulder pain radiating to the right arm and hand; he, however, stated that she related these symptoms to her occupational, job-related duties. He related a September 2006 work injury and stated that the work that appellant had performed at the employing establishment had caused or aggravated her neck, lumbar, and shoulder conditions and that her duties after March 13, 2010 worsened her right shoulder condition, her work post-2007 aggravated her back condition, and the duties throughout her career had caused or aggravated her neck and left shoulder conditions.

Dr. Almentero stated that individuals who sustain occupational disease of the cervical spine, lumbar spine, and shoulders due to job duties have a tendency to experience acute exacerbations of pain involving these areas at later dates, which might be caused by minor or incidental trauma and which might interfere with one's normal activities of daily living, as has been the case with appellant. He stated that such occupational duties might also predispose her to the premature development of osteoarthritis involving the cervical spine, lumbar spine, and right shoulder; her subjective signs and symptoms were within the normal limits of the average person subjected to this type of occupational disease. Dr. Almentero concluded that, after reviewing her condition, based on her history, complaints, examinations, test results, lack of

previous symptoms and his experience with similar cases, her above-mentioned occupational diseases were directly and causally related to the work-related duties of her occupation.

By decision dated November 21, 2013, OWCP denied appellant's application for review as it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

In a November 18, 2013 report, received by OWCP on November 25, 2013, Dr. Almentero essentially reiterated his previous findings and conclusions and he indicated that this report was an amended version of the March 12, 2013 report. This report was identical to his previously submitted "amended" report dated August 22, 2013, except that it added a notation that appellant was last seen in his practice on May 7, 2013, by Dr. Hajela who prescribed Voltaren, Zanaflex, and Oxycondone and recommended that appellant follow up with a surgeon.

By letter dated December 6, 2013, counsel requested reconsideration.

By decision dated October 24, 2014, OWCP denied appellant's application for review as it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

### **LEGAL PRECEDENT**

Section 8128 (a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>2</sup> Under OWCP's regulations at 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup>

### **ANALYSIS**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP.

Appellant submitted a new report dated November 18, 2013 from Dr. Almentero, which he stated was an amended version of the March 12, 2013 report. This report, however, was identical to his previously submitted "amended" report dated August 22, 2013, except that it noted that he was seen for reevaluation by Dr. Hajela on May 7, 2013 and prescribed medications. The Board has held that the submission of evidence which does not address the

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<sup>2</sup> *Id.* at § 8128(a); *see also J.W.*, 59 ECAB 507 (2008).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>4</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

particular issue involved in the case does not constitute a basis for reopening the claim.<sup>5</sup> The new evidence presented in this report, *i.e.*, that appellant was seen by Dr. Hajela on May 7, 2013 is not pertinent to the issue on appeal; whether Dr. Hajela has established that appellant sustained a work-related back, neck, or bilateral shoulder condition caused or aggravated by her work duties. This report from Dr. Almentero dated November 18, 2013, otherwise only reiterated findings and conclusions he made in his August 22, 2013 report; that appellant's claimed condition was attributable to an "occupational work duties" and "occupational disease." OWCP previously considered his findings and conclusions in reviewing the August 22, 2013 report in its November 21, 2013 nonmerit decision. This report is therefore cumulative and duplicative and is not relevant to the issue presented in the instant case.<sup>6</sup>

On appeal, counsel contends that OWCP abused its discretion by failing to conduct a merit review given that appellant submitted new medical evidence; *i.e.*, Dr. Almentero's amended November 18, 2013 report, to support an occupational disease claim. He contends that Dr. Almentero demonstrated his awareness of appellant's work duties and medical history in his March 12, 2013 report, and subsequently clarified his opinion that she aggravated her neck and back conditions as a result of performing her work duties for the employing establishment. Counsel therefore requests that the Board: (a) reverse OWCP's July 17, 2013 merit decision and accept appellant's claim; or (b) vacate and remand for further development of the medical evidence pertaining to the issue of whether she submitted sufficient medical evidence to establish a causal relationship between the medical conditions and her work exposure. The Board, however, as previously noted, does not have jurisdiction over the merits of the claim as this appeal was not filed within 180 days of the last merit decision issued on July 17, 2013.<sup>7</sup> For the reasons stated above, the Board does not accept counsel's argument and denies his request. The Board affirms OWCP's October 24, 2014 decision.

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its October 24, 2014 decision.

### CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>5</sup> See *David J. McDonald*, 50 ECAB 185 (1998).

<sup>6</sup> See *Patricia G. Aiken*, 57 ECAB 441 (2006).

<sup>7</sup> 20 C.F.R. § 501.3(e).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2015  
Washington, DC

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

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

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