



## **FACTUAL HISTORY**

On January 30, 2009 appellant, a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that she sustained an injury on October 1, 2008 as a result of being struck on the left side of her postal vehicle during a motor vehicle accident while delivering mail in the performance of duty. OWCP accepted the claim for displacement of cervical intervertebral disc without myelopathy and appellant received compensation benefits.

OWCP referred appellant to Dr. Steven Mather, an orthopedic surgeon, for an impartial medical examination to determine the nature and extent of her employment-related condition following the identification of a conflict in the medical record of this case. In his August 1, 2012 report, Dr. Mather found that appellant had “no findings on examination, nor any neck complaints after her motor vehicle accident by her treating physicians in November 2008, to validate the neck injury was from the October motor vehicle accident.” He concluded that appellant had no employment-related conditions or residuals.

In a December 17, 2012 letter, OWCP proposed to rescind the acceptance of appellant’s cervical condition and terminate her compensation benefits after finding that her cervical condition was not employment related. It afforded her 30 days to submit additional evidence or argument if she was in disagreement with the proposed action.

In a brief dated January 17, 2013, appellant’s attorney argued that Dr. Mather’s opinion was insufficiently based on the statement of accepted facts (SOAF) and lacked sufficient probative value to rescind appellant’s accepted cervical condition and terminate her compensation benefits.

By decision dated March 5, 2013, OWCP rescinded the acceptance of appellant’s cervical condition and terminated her compensation benefits finding that her cervical condition was not employment related, relying upon Dr. Mather’s August 1, 2012 report.

On March 5, 2014 appellant, through counsel, requested reconsideration and submitted additional medical evidence, including a January 27, 2014 report from Dr. Nadia Siddiqui, her internist.

By decision dated April 28, 2014, OWCP denied modification of its March 5, 2013 termination decision. It explained that the weight of the medical evidence continued to rest with Dr. Mather as he was an appropriate specialist to evaluate the claimed conditions, that he reviewed appellant’s file, and that he conducted a thorough physical examination, and that he provided an unequivocal and well-reasoned medical opinion resolving the conflict in medical opinion based on accurate and consistent factual and medical history.

On April 27, 2015 appellant, through counsel, requested reconsideration of the merits of her claim. Counsel submitted a brief dated April 26, 2015 arguing: (1) Dr. Mather had not based his opinion on the SOAF; (2) OWCP had not given Dr. Mather the correct standard for determining whether appellant’s diagnosis was related to her work injury; and (3) Dr. Mather never answered the questions that OWCP presented to him.

By decision dated May 18, 2015, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>2</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>3</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by 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.<sup>4</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.<sup>5</sup> 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.<sup>6</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>7</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

### **ANALYSIS**

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

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, 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 U.S.C. § 8128(a).

<sup>3</sup> *See Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>8</sup> *Id.*

considered by OWCP. In support of her April 27, 2015 reconsideration request, appellant's counsel submitted a brief dated April 26, 2015 arguing that: (1) Dr. Mather had not based his opinion off of the SOAF; (2) OWCP had not given Dr. Mather the correct standard in determining whether appellant's diagnosis was related to her work injury; and (3) Dr. Mather never answered the questions that OWCP presented to him.

The Board finds that submission of these arguments does not require reopening appellant's case for merit review as they are substantially similar to the arguments counsel presented in his January 17, 2013 brief and were addressed by OWCP in its merit decisions dated March 5, 2013 and April 28, 2014, which found that Dr. Mather was an appropriate specialist, reviewed the entire case file, completed a thorough physical examination, and provided a well-reasoned and unequivocal medical opinion based on a complete, accurate, and consistent history of appellant's case. Therefore, this evidence is repetitive or duplicative of arguments previously considered and reviewed by OWCP, it does not constitute relevant and pertinent new evidence and is insufficient to require OWCP to reopen the claim for consideration of the merits.<sup>9</sup> Appellant did not submit any new medical evidence in support of her request.

On appeal counsel argues that OWCP should have granted a review of the merits. The Board finds that as appellant did not meet any of the necessary requirements, she is not entitled to further merit review.<sup>10</sup> Counsel further contends on appeal that OWCP may not have given appellant's request for reconsideration a review at all. The Board finds that counsel's argument is not substantiated as OWCP noted considering counsel's brief.

### **CONCLUSION**

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

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<sup>9</sup> See *supra* note 7.

<sup>10</sup> See *L.H.*, 59 ECAB 253 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board