United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 16-0010**
	)	**Issued: April 1, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 2, 2015 appellant, through counsel, filed a timely appeal from a June 16, 2015 merit decision and an August 20, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on March 5, 2015 because the accepted conditions had resolved with no residuals; (2) whether appellant established that she had any continuing employment-related disability or condition after March 5, 2015; and (3) whether OWCP properly refused to reopen her claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal counsel asserts that the decisions are contrary to law and fact.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 2, 1990 OWCP accepted that appellant, then a 24-year-old letter carrier, sprained her left ankle when she fell while delivering mail on June 18, 1990. Appellant began modified duty and received intermittent compensation. In 1995 she came under the care of Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon.

On August 9, 1996 appellant filed a claim for a schedule award (Form CA-7). In an August 19, 1996 decision, OWCP denied the claim because the medical evidence failed to establish left lower extremity permanent impairment due to the June 18, 1990 employment injury. Appellant again filed a claim for a schedule award in October 2002. By decision dated August 4, 2003, she was granted a schedule award for 28 percent permanent loss of use of the left leg.

Appellant continued modified duty, based on restrictions provided by Dr. Chmell who recommended that she have a sitting job with no prolonged walking or standing.[2] On July 11, 2005 Dr. Chmell noted that a magnetic resonance imaging (MRI) scan of the left ankle revealed no gross abnormalities,[3] but he continued her restrictions. On August 29, 2005 Dr. Chmell reported that appellant complained of problems with her right foot. He advised that she walked with a prominent limp on the left side, had examination findings of bilateral ankle swelling with crepitus and tenderness, and swelling and tenderness on the right beneath the medial malleolus. Dr. Chmell diagnosed worsened left ankle derangement and right ankle derangement and right posterior tibial tendinitis.

In correspondence dated October 25, 2005, Dr. Chmell described appellant's condition, noting that she had to walk and stand to excess on a cold cement surface at work. He maintained that her right ankle and foot derangement were consequential conditions of the left foot work injury and asked that the condition be accepted. On January 31, 2006 Dr. Chmell advised that standing and walking should be limited to one to two hours daily.

On June 16, 2006 OWCP referred the medical record to its adviser as to whether a consequential right ankle condition should be accepted.

In a June 21, 2006 report, Dr. Benjamin P. Crane, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed the record and concluded that right posterior tibial tendinitis was a consequential condition that resulted from the altered gait from the June 18, 1990 left ankle sprain. On June 28, 2006 OWCP accepted right posterior tibial tendinitis.

A July 20, 2006 MRI scan of the right ankle demonstrated no abnormality.

On September 11, 2006 appellant filed a recurrence claim (Form CA-2a). She stated that she stopped work on September 7, 2006 because she was working outside her restrictions.

[2] A rehabilitation distribution window clerk position was accepted by appellant on August 21, 2001. Standing, sitting, and walking were not to exceed one hour.

[3] A copy of the MRI scan report is not found in the case record.

P. Powell, a customer service supervisor, advised that appellant worked as a lobby director where she sat on a stool and assisted customers, and that appellant had returned to work on September 22, 2006. Appellant also filed a Form CA-7, claim for compensation, for the period September 7 to 21, 2006.

In reports dated September 11 to 21, 2006, Dr. Chmell advised that appellant could not work for the period September 7 through 21, 2006 and that she needed a sitting job. He reiterated his restrictions and advised that appellant could return to restricted duty on September 22, 2006. In reports dated October 23, 2006, Dr. Chmell diagnosed bilateral ankle and foot derangements and bilateral tibialis tendinitis. He advised that she needed a sitting job and provided permanent daily restrictions of six to seven hours sitting, one to two hours walking and standing, no twisting, bending, stooping, pushing, pulling, squatting, kneeling, or climbing and one to two hours lifting 15 pounds. On November 27, 2006 Dr. Chmell noted that appellant was working at a new duty station in a mainly sitting job within her restrictions.

By decision dated December 28, 2006, OWCP denied appellant's claimed disability from work beginning September 7, 2006, noting that the evidence did not support that appellant was working outside her restrictions and because Dr. Chmell did not explain why she could not perform her modified job duties.

Dr. Chmell submitted monthly reports describing appellant's lower extremity condition and reiterating his restrictions. A February 23, 2008 MRI scan of the right ankle demonstrated a trace amount of fluid which he determined could represent a minimal-to-mild tenosynovitis. On March 20, 2008 Dr. Chmell advised that appellant had a flare-up of pain and swelling in both ankles. He advised that appellant could not work from March 20 through 30, 2008 and could return to limited duty on March 31, 2008. In reports dated April 17 to July 3, 2008, Dr. Chmell noted that appellant had returned to restricted duty and advised that she had reached maximum medical improvement for the diagnosed bilateral ankle/hind foot derangement with tendinosis and that she had permanent impairment.

On June 1, 2008 appellant filed a schedule award claim. On January 14, 2009 she was granted a schedule award for 29 percent impairment of the right leg.

Dr. Chmell continued to submit monthly reports. On June 28, 2012 he reported that appellant's feet, particularly the left foot, were getting worse and she had difficulty walking and standing. Dr. Chmell described examination findings of crepitus and tenderness in the posterior tibialis tendon with associated weakness, worse on the left. He diagnosed tendinitis of both ankles and feet, bilateral ankle and foot derangement, ganglion cysts of both ankles, left foot first metatarsalgia, and right-sided lumbago.

Appellant stopped work on July 26, 2012 and filed a claim for compensation (Form CA-7). On July 26, 2012 Dr. Chmell reported that appellant had continued left ankle and foot pain and had developed painful venous varicosities in the right leg. He reiterated his diagnoses, adding that aggravation of venous varicosities in the right leg were secondary and consequential to his previous diagnoses. Dr. Chmell concluded that appellant's condition had deteriorated considerably and she was fully incapacitated for duty.

OWCP asked its medical adviser to again review the record and address whether the left posterior tibial tendinitis or right venous varicosities were a consequence of the accepted left ankle sprain and right tibial tendinitis. In an August 11, 2012 report, Dr. Christopher Gross, a Board-certified orthopedic surgeon and OWCP medical adviser, noted his review of the record since July 2010. He indicated that copies of recent MRI scans of the left ankle were not in the record. The medical adviser described the June 18, 1990 work injury and accepted conditions and discussed the factors that could cause venous varicosities. He recommended that OWCP reject acceptance of right venous varicosities as employment related and requested additional records, including the MRI scan reports and medical records dating back to the employment injury, to confirm a diagnosis of left posterior tibialis tendinitis and prove causation.

Appellant continued to submit claims for compensation.

A July 5, 2012 MRI scan of the left foot showed no evidence of internal derangement involving the forefoot. A left ankle MRI scan of that day demonstrated mild posterior tibial tenosynovitis and mild spur formation, and likely bone marrow edema. In a September 10, 2012 report, Dr. Chmell noted treating appellant for over 10 years for work injuries and described MRI scan findings. He opined that her work-related condition had progressively worsened with pain, swelling, crepitus, tenderness, and diminished strength and motion of her ankles and feet, especially on the left. Dr. Chmell asserted that this was due to work activities of walking and standing on a hard cement surface. He diagnosed worsening/aggravation of bilateral posterior tibial tendinitis and aggravation of navicular bone spur and bone bruise on the left. Dr. Chmell found that she was unable to work.

By letter dated September 14, 2012, OWCP informed appellant that no action could be taken on her CA-7 claims, awaiting resolution of whether additional conditions were employment related.

OWCP forwarded the medical adviser's August 11, 2012 report to Dr. Chmell for review. In a September 21, 2012 response, Dr. Chmell disagreed with Dr. Gross' conclusion that appellant's venous varicosities were not work related, stating that his physical restrictions had not been honored by the employing establishment and that this had caused a material worsening of her condition which led to right-sided venous stasis and venous varicosities as a consequential condition. He opined that, for the same reasons, her left ankle sprain had worsened, leading to the development of posterior tibial tendinitis on the left, as demonstrated on a recent MRI scan. Dr. Chmell continued to advise that appellant could not work.

OWCP found that a conflict in medical evidence had been created between Dr. Chmell and Dr. Gross regarding whether the conditions of left tibialis tendinitis and right venous varicosities were employment related. In October 2012 it referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a November 26, 2012 report, Dr. Komanduri noted the history of injury and his review of the medical record. He described appellant's current complaint of severe pain with weight-bearing on the left. Dr. Komanduri reported that examination confirmed varicosities in both legs but that he was unable to identify evidence of posterior tibial tendon weakness bilaterally, noting

that palpation confirmed intact tendons, and while there was diffuse edema and swelling present in the lower extremities, this was associated with venous dilatation and varicosities. He found no evidence of significant loss of ankle range of motion. Dr. Komanduri advised that he was at a loss to explain how someone could undergo more than 20 years of treatment for an alleged ankle sprain, noting that the diagnosis of posterior tibial tendinitis was made after multiple negative MRI scans over the past decade, and even when finally noted on a 2012 MRI scan, it was very modest. He opined that appellant's varicosities were age related and due to venous incompetence, and not due to accepted diagnoses. Dr. Komanduri found no substantial evidence of posterior tibial tendinitis on MRI scan or on her examination and indicated that he could not imagine a scenario where posterior tibial tendinitis required treatment for more than six months, noting that if there had been posterior tibial tendinitis for 10 to 20 years, it would have resulted in a rupture long before the present. He concluded that appellant only had venous stasis at the time of his examination. In answer to OWCP questions, Dr. Komanduri advised that the diagnosis of left posterior tibial tendinitis was barely supported on the most recent MRI scan and was not clinically supported, and that her right venous varicosities were not employment related. He concluded that appellant had no residuals or physical limitations resulting from the June 18, 1990 work injury and that she was released to full duty. Dr. Komanduri recommended treatment for the nonemployment-related varicosities and noted that she was receiving repetitive prescriptions for narcotics which, he maintained, were not required for her diagnoses.

Appellant continued to submit compensation claims. In November 15 and December 27, 2012 reports, Dr. Chmell described her medical management, reiterated his diagnoses and conclusions, and advised that appellant was totally disabled.

On January 24, 2013 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that Dr. Komanduri's opinion that she no longer had disability or residuals due to the accepted conditions constituted the weight of the medical evidence.

In January 17, 2013 correspondence, received on January 28, 2013, Dr. Chmell disagreed with Dr. Komanduri's findings. He reiterated his opinion that appellant had employment-related left posterior tibial tendinitis. On February 11 and 19, 2013 Dr. Chmell disagreed with the proposed termination, opining that appellant had continuing residuals and disability due to her work-related conditions. He continued to provide treatment notes describing appellant's status and finding her totally disabled.

Appellant retired on disability, effective September 6, 2013.

By decision dated December 4, 2013, OWCP found that the weight of the medical evidence rested with the referee opinion of Dr. Komanduri and finalized the termination of wage-loss compensation and medical benefits, effective November 25, 2013. It also denied appellant's claim for wage-loss compensation for the period July 12, 2012 through March 13, 2013 because the record did not support disability for work during this period.

Appellant timely requested a hearing before an OWCP hearing representative, and submitted an April 10, 2014 report in which Dr. Chmell maintained that her accepted conditions were permanent, with continuing residuals.

Following a preliminary review of the record, an OWCP hearing representative found that no conflict existed between the opinions of Dr. Chmell and the medical adviser because the opinion of the medical adviser was not of equal weight to that of Dr. Chmell. Thus, it was improper for OWCP to give special weight to the opinion of Dr. Komanduri. OWCP's hearing representative found that a conflict in medical evidence existed between the opinions of Dr. Chmell and Dr. Komanduri regarding whether the left posterior tibial tendinitis or right venous varicosities were caused or aggravated by the June 18, 1990 employment injury and whether appellant had residuals of the accepted conditions. She reversed the December 4, 2013 decision and ordered OWCP to arrange an appropriate referee examination.

In November 2014, OWCP referred appellant, a SOAF noting the accepted conditions, the medical record, and a set of questions to Dr. Ira B. Kornblatt, a Board-certified orthopedic surgeon, for an impartial evaluation. Dr. Kornblatt was asked if the left posterior tibialis tendinitis and right venous varicosities diagnoses were established and, if so, were they caused or aggravated by the work injury, and whether appellant continued to have residuals of the accepted injury.

In a December 3, 2014 report, Dr. Kornblatt noted his review of the SOAF and medical record. He described the history of injury and appellant's complaint of right ankle pain. On examination, appellant walked without a limp and had full painless range of motion of the hips and knees. Dr. Kornblatt advised that appellant had pes planovalgus[4] bilaterally and well-maintained ankle, hindfoot, midfoot, and forefoot range of motion. He noted no swelling and indicated that appellant had excellent strength with regard to the posterior tibial tendon bilaterally. Dr. Kornblatt advised that he reviewed both the report and images of a July 2012 MRI scan of the left foot and ankle which was consistent with mild posterior tibial tendinitis. He further advised that right venous varicosity was a presumed diagnosis, based on localized swelling and palpation of an area in the right lower extremity. Dr. Kornblatt opined that there was no evidence that the June 18, 1990 employment injury resulted in right venous varicosities or ongoing posterior tibial tendinitis, noting that her pes planovalgus predisposed appellant to tibial tendinitis, and that the June 18, 1990 employment injury may have resulted in a temporary aggravation. He noted that appellant had not worked in a year and a half. Dr. Kornblatt indicated that appellant had no work-related disability as a result of the 1990 left ankle sprain and any present disability was due to the degenerative process due to her foot and ankle anatomy and obesity. He concluded that on his examination there were no objective findings to substantiate ongoing subjective complaints and, as such, there was no evidence of residuals of the 1990 employment injury, and further treatment for this injury was not needed.

Dr. Chmell continued to submit monthly reports reiterating his findings and conclusions.

On January 22, 2015 OWCP proposed to terminate appellant's medical and wage-loss compensation benefits based on Dr. Kornblatt's opinion.

In a letter dated February 6, 2015, Dr. Chmell disagreed with the proposed termination. He maintained that Dr. Kornblatt's reasoning was not sound or well rationalized.

[4] Pes planovalgus is a condition wherein the longitudinal arch of the foot is flattened and turned outward. *The American Heritage Medical Dictionary* (2007).

By decision dated March 5, 2015, OWCP finalized the termination of benefits, effective that day, finding that the weight of the medical evidence rested with the referee opinion of Dr. Kornblatt.

On March 19, 2015 appellant requested reconsideration and submitted a February 26, 2015 treatment note in which Dr. Chmell described appellant's complaints, examination findings, and reiterated his diagnoses.

In a merit decision dated June 16, 2015, OWCP denied modification of the March 5, 2015 decision.

On July 21, 2015 appellant again requested reconsideration. She submitted a July 10, 2015 letter in which Dr. Chmell cited section 702.411(a) and (b) of OWCP regulations and section 5.200.10 of OWCP's procedures to support his opinion that the reports of Dr. Komanduri and Dr. Kornblatt were invalid because OWCP rules and regulations had been violated. Dr. Chmell maintained that the above-cited provisions explicitly stated that the examining physician could not be apprised of opinions, reports, or conclusions of any other physician with regard to the nature of an employee's injury.

In a nonmerit decision dated August 20, 2015, OWCP denied merit review. It found the regulation and procedure manual provision he cited were irrelevant to the instant case, noting that OWCP followed appropriate procedures in this case.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[5] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.[7]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on March 5, 2010. The accepted conditions in this case are left ankle sprain and consequential right tibial tendinitis, caused by a June 18, 1990 employment injury. OWCP determined that a conflict in medical evidence had been created between the

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *Id.*

[7] *T.P.*, 58 ECAB 524 (2007).

opinions of Dr. Chmell, an attending orthopedic surgeon, and Dr. Komanduri, an OWCP referral orthopedist, regarding whether appellant had continuing residuals and/or disability due to the employment injury, and whether additional conditions of left tibial tendinitis or right venous varicosities were caused or aggravated by the June 18, 1990 employment injury. OWCP then referred appellant to Dr. Kornblatt, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict.

In a December 3, 2014 report, Dr. Kornblatt noted his review of the SOAF and medical record and provided findings on examination. He described the history of injury, appellant's complaint of right ankle pain, and physical findings. Dr. Kornblatt advised that appellant had pes planovalgus bilaterally and well-maintained ankle, hindfoot, midfoot, and forefoot range of motion. He noted that appellant had excellent strength with regard to the posterior tibial tendon bilaterally. While Dr. Kornblatt found the diagnoses of mild left posterior tibial tendinitis and right venous varicosity established, he opined that there was no evidence that the June 18, 1990 employment injury resulted in these conditions at present, noting that appellant's pes planovalgus predisposed her to tibial tendinitis, and that the 1990 work injury may have resulted in a temporary aggravation. He opined that appellant had no work-related disability as a result of the 1990 work injury and that any present disability was due to the degenerative process in her foot and ankle anatomy and to obesity. Dr. Kornblatt concluded that, as there were no objective findings to substantiate ongoing subjective complaints, as such, there was no evidence of residuals of the June 18, 1990 work injury, and further treatment for this injury was not needed.

The Board finds that Dr. Kornblatt provided a comprehensive, well-rationalized opinion in which he expressly concluded that any residuals of appellant's accepted conditions had resolved and also explained why the additional conditions of left tibial tendinitis and right venous varicosities were not employment related. Dr. Kornblatt's opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.[8]

The medical evidence appellant submitted prior to the termination is insufficient to overcome the special weight accorded Dr. Kornblatt as an impartial medical specialist. In a number of reports, Dr. Chmell essentially reiterated his findings and conclusion that appellant continued to be disabled due to the employment injury. The Board has long held that reports from a physician who was on one side of a medical conflict that has been resolved by an impartial specialist, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.[9]

The Board concludes that Dr. Kornblatt's opinion, that residuals of appellant's accepted conditions had ceased, is entitled to the special weight accorded an impartial medical examiner,[10] and the additional reports from Dr. Chmell are insufficient to establish any residuals of the

[8] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[9] *I.J.*, 59 ECAB 408 (2008).

[10] *See supra* note 8.

accepted conditions or additional employment-related conditions. OWCP therefore properly terminated appellant's compensation benefits on March 5, 2015.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits on March 5, 2015, the burden shifted to her to establish any continuing disability causally related to the accepted conditions.[11] Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence with her March 19, 2015 reconsideration request to establish continuing disability after March 5, 2015 due to the June 18, 1990 employment injury.

As discussed, Dr. Kornblatt provided a comprehensive report in which he outlined findings and provided a rationalized opinion explaining that appellant's accepted conditions of left ankle sprain and right tibial tendinitis had resolved and that she could return to her previous letter carrier duties. He also clearly explained that additional conditions were not employment related.

In his February 26, 2015 treatment note submitted on reconsideration, Dr. Chmell merely described appellant's complaints, examination findings, and reiterated his diagnoses. The Board finds this report of diminished probative value because Dr. Chmell did not explain how appellant continued to be totally disabled after March 5, 2015 due to the June 18, 1990 employment injury.[13] Dr. Chmell did not explain why this injury caused continuing disabling residuals, and, as stated earlier, he had been on one side of the conflict in medical evidence resolved by Dr. Kornblatt. His report submitted on reconsideration is therefore entitled to little probative value and is insufficient to meet an employee's burden of proof to establish that she continued to have work-related disability due to the accepted conditions.[14]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[11] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[12] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[14] *S.S.*, 59 ECAB 315 (2008).

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[15] Section 10.608(a) of OWCP's regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).[16] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.[17] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[18]

ANALYSIS -- ISSUE 3

The Board finds that Dr. Chmell's assertion in his July 10, 2015 correspondence submitted on reconsideration is insufficient to require OWCP to reopen this claim for merit review. Dr. Chmell asserted that OWCP erroneously relied on the opinions of Dr. Kornblatt and Dr. Komanduri because section 702.411(a) and (b) of OWCP regulations and section 5.200.10 of OWCP's procedures explicitly state that the examining physician could not be apprised of opinions, reports, or conclusions of any other physician with regard to the nature of an employee's injury, and both Dr. Kornblatt and Dr. Komanduri had reviewed the evidence of record.

The regulation cited by Dr. Chmell, 20 C.F.R. § 702.411, is in reference to the Longshore and Harborworkers' Compensation Act and is not relevant to FECA.[19] Likewise, OWCP procedures provision cited, Chapter 5.200.10, is not relevant because it is in regard to benefit payments and does not discuss requirements for a physical examination.[20]

As described above, an application for reconsideration before OWCP must be submitted in writing and set forth arguments and contain evidence that either shows that OWCP erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by OWCP, or constitutes relevant and pertinent new evidence not

[15] 5 U.S.C. § 8128(a).

[16] 20 C.F.R. § 10.608(a).

[17] *Id.* at § 10.606(b)(3).

[18] *Id.* at § 10.608(b).

[19] *Id.* at § 702.411.

[20] Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Overviews by BPS*, Chapter 5.200.10. (April 2005).

previously considered by OWCP.[21] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[22] Thus, Dr. Chmell's assertion is insufficient to show that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. As Dr. Chmell's argument does not have a basis in law, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).[23]

With respect to the third above-noted requirement under section 10.606(b)(3), appellant merely submitted the correspondence from Dr. Chmell, discussed above, with her July 21, 2015 reconsideration request. OWCP properly denied her reconsideration request as it was not pertinent or relevant new evidence not previously considered by OWCP.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits on March 5, 2015 because she had no residuals of the accepted conditions, that she did not establish any continuing employment-related disability or condition after that date causally related to the June 18, 1990 employment injury, and 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).

[21] 20 C.F.R. § 10.606(b)(3).

[22] *Id.* at § 10.608(b).

[23] *Id.* at § 10.606(b)(3); *see R.M.*, 59 ECAB 690 (2008).

ORDER

IT IS HEREBY ORDERED THAT the August 20 and June 16, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2016
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