

FACTUAL HISTORY

This case has previously been before the Board.² The law and the facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

The relevant facts are as follows. Appellant, then a 50-year-old postal support employee alleged that she sustained injury to her right elbow on November 5, 2012 when she hit her elbow on an iron bin while pulling mail from a slot. By decision dated April 3, 2014, OWCP accepted that the incident occurred as alleged, but denied the claim as the medical evidence of record did not establish that appellant sustained a right elbow injury on November 5, 2012 causally related to the accepted incident. Appellant appealed to the Board. By decision dated October 29, 2014, the Board affirmed the denial of the claim finding that appellant had not met her burden of proof to establish a traumatic injury in the performance of duty.³

By letter dated February 12, 2015, received on February 24, 2015, appellant requested reconsideration and submitted medical evidence. In a diagnostic report dated April 17, 2013, Dr. Matthew Dixon, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's right elbow. He noted his impression of a small partial tear of the extensor carpi radialis brevis tendon origin, with no other significant findings.

In a duty status report dated April 20, 2013, Dr. Michael Adams, a Board-certified surgeon, recommended work restrictions for appellant of no more than 5 pounds of continuous or 10 pounds of intermittent lifting, no continuous sitting, no continuous standing, no continuous walking, no more than one to two hours of kneeling per day, no more than four to six hours of bending/stooping per day, no more than one to two hours of twisting per day, no more than two to eight hours of pushing/pulling per day, no continuous simple grasping, no more than two to six hours of fine manipulation per day, and no more than two to four hours of reaching above the shoulder per day.

By decision dated March 2, 2015, OWCP denied appellant's request for reconsideration without reviewing the merits of her case, under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements

² *Id.*

³ Docket Nos. 14-1350 and 14-1974 (issued October 29, 2014).

⁴ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ 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.⁸

ANALYSIS

The Board issued an October 29, 2014 decision finding that appellant had not met her burden of proof to establish a traumatic injury in the performance of duty. Appellant had not established that her alleged right elbow injury was causally related to the accepted November 5, 2012 employment incident. On February 12, 2015 she requested reconsideration of the Board.⁹

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her February 12, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is 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).

The underlying issue is whether appellant met her burden of proof to establish a traumatic injury causally related to the accepted employment incident. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any new and relevant evidence in this case. With her request, she submitted reports from Drs. Dixon and Adams dated April 17 and 20, 2013, respectively. These documents were previously considered by OWCP and were specifically summarized in the Board's prior decision. As the documents were previously considered by OWCP, they did not form a proper basis for conducting a merit review of appellant's claim.¹⁰

⁵ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁶ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁷ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁸ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

⁹ OWCP is not authorized to review Board decisions. Although the October 29, 2014 Board decision was the last merit decision, OWCP's April 3, 2014 decision is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

¹⁰ Absent further review by OWCP, the Board's October 2, 2014 decision is *res judicata*. *See Hugo A. Mentick*, 9 ECAB 628 (1958); *see also Evan D. Henderson*, Docket No. 05-1852 (issued April 5, 2006).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2015 is affirmed.

Issued: August 2, 2016
Washington, DC

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

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

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