

FACTUAL HISTORY

OWCP accepted that appellant, a 36-year-old mail processing clerk, sustained a cervical sprain on September 28, 1992 while in the performance of duty. It authorized a February 8, 1993, anterior cervical disc removal and fusion at C4-5. Following surgery, appellant returned to modified work and began a rehabilitative job assignment on May 20, 1996. She filed a claim for a schedule award (Form CA-7) on March 27, 2002. In a decision dated May 13, 2003, OWCP granted a schedule award for three percent permanent impairment of the right upper extremity and three percent permanent impairment of the left upper extremity.² Appellant was separated from the employing establishment effective February 17, 2011 due to unacceptable conduct.

Appellant submitted a September 25, 2012 letter to OWCP requesting permission to seek another doctor to handle her case and a December 6, 2012 letter indicating that she would schedule an appointment with a new physician for a complete evaluation of her neck.

On November 13, 2013 appellant filed a recurrence of medical treatment (Form CA-2a) commencing on June 3, 2009 due to her original September 28, 1992 employment injury.³ She stated that she had permanent lifting limitations and she was seeing a doctor on a continuous basis every six months for pain management. Appellant alleged that the cervical pain from her original injury had never ceased and her pain medication was helping her cope with activities of daily living, but OWCP closed her case in the middle of her care while she was still under doctor's orders. With her claim, she submitted a June 27, 2013 cervical spine magnetic resonance imaging (MRI) scan report which noted multiple congenital fusions and herniation at C5-6 and C6-7.

On February 24, 2014 OWCP advised appellant of the type of medical evidence needed to establish entitlement to additional medical treatment.

On March 21, 2014 appellant informed OWCP that since her injury and surgery she never had physical therapy. She indicated that her condition remained symptomatic. Appellant submitted a March 31, 1993 medical report that was previously of record.

By decision dated April 2, 2014, OWCP denied the recurrence claim finding that appellant failed to establish that she required additional medical treatment due to a worsening of her accepted cervical sprain without intervening cause.

On May 5, 2014 appellant requested a review of the written record by an OWCP hearing representative. Thereafter, she submitted a March 17, 2014 report from Dr. Helo Chen, an osteopath and family practitioner, who diagnosed cervical discopathy or radiculitis that was due to the September 28, 1992 work injury. Appellant also submitted evidence that predated the claimed recurrence of her medical condition.

² Appellant was also involved in two nonwork-related motor vehicle accidents in 2008. Her treating physician at that time, Dr. Michael P. Barker, a Board-certified psychiatrist, indicated that these accidents caused increased neck pain. Dr. Barker opined that appellant could continue working with regard to her accepted condition.

³ The record indicates that appellant previously filed a separate claim for a June 2, 2009 injury which OWCP denied on August 28, 2009. This other claim is not presently before the Board.

By decision dated May 22, 2014, OWCP denied appellant's request for a review of the written record finding that her request was untimely because it was not made within 30 days of its April 2, 2014 decision. It further indicated that it had exercised its discretion and further denied the request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

On July 18, 2014 appellant requested reconsideration.

By decision dated November 7, 2014, OWCP denied modification of its April 2, 2014 decision finding that the medical evidence failed to establish that appellant sustained a recurrence on June 3, 2009.

On December 23, 2014 appellant requested reconsideration and submitted a narrative statement dated December 23, 2014 reiterating the factual history of her claim and requesting that she be allowed to keep her current doctor as her treating physician for this case. She also resubmitted her letters dated September 25 and December 6, 2012.

By decision dated June 24, 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 it 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.⁴ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵

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.⁶ 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.⁷ 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.⁸

⁴ 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).

⁵ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁶ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS

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

Appellant did not demonstrate that OWCP erroneously applied or interpreted a point of law. Moreover, she did not advance a legal argument not previously considered by OWCP.

In support of her reconsideration request, appellant submitted a December 23, 2014 narrative statement reiterating the factual history of her claim and requesting that she be allowed to keep her current doctor as her treating physician for this case. Her statement is irrelevant to the issue at hand, which is whether she sustained a recurrence of her need for medical treatment beginning June 3, 2009 causally related to her accepted September 28, 1992 employment injury. This is a medical issue.¹¹ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹² The Board finds that this document does not constitute relevant and pertinent new evidence and is not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant also resubmitted her letters to OWCP dated September 25 and December 6, 2012. The Board finds that the submission of this evidence did not require reopening her case for merit review because she had submitted the same evidence, which was previously reviewed by OWCP in its April 2, 2014 decision. As the letters repeat evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Thus, appellant has not established a basis for reopening her case.¹³

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 considered by OWCP, nor did she submit any relevant and pertinent new evidence not previously considered. The Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.¹⁴

⁹ See *A.L.*, *supra* note 6. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ See *M.D.*, 59 ECAB 211 (2007) (causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence).

¹² See *Nina Corazon Pelejo*, Docket No. 05-1063 (issued August 9, 2005).

¹³ See *D.K.*, 59 ECAB 141 (2007).

¹⁴ See *L.H.*, 59 ECAB 253 (2007).

On appeal, appellant contends that OWCP closed her case in the midst of her changing doctors. She further contends that her neck injury is a permanent disability and argues that no doctor has relieved her from any treatment yet. As noted above, however, the Board does not have jurisdiction over the merits of the claim. The Board only has jurisdiction over OWCP's June 24, 2015 nonmerit decision and, as explained, appellant has not met any of the three regulatory criterion for having her claim reopened for a merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2016
Washington, DC

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

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

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