

her federal duties. She indicated that she sustained two herniated discs, one bulging disc, and had a compressed nerve in her neck with resulting severe cervical spinal stenosis. She first became aware of her condition its relation to her federal employment on March 31, 2010. She retired from the employing establishment on January 31, 2013.

By letter dated December 17, 2013, OWCP advised appellant that this claim was only for additional work exposure since April 23, 2010. It noted that appellant had previously filed an occupational disease claim on April 23, 2010 for the same claimed condition with the same date of injury, which was assigned claim number xxxxxx692.² OWCP informed appellant of the deficiencies in her claim and afforded her 30 days in which to submit additional factual and medical evidence, including a statement of injury detailing her work exposure and factors of employment since April 23, 2010, medical evidence containing a work-related diagnosis, and a medical report from a physician discussing how the diagnosed condition was materially caused or aggravated by her work exposure since April 23, 2010. Appellant submitted additional factual and medical evidence.

By decision dated February 10, 2014, OWCP denied the claim, finding that the factual evidence was insufficient to establish a compensable work exposure from April 23, 2010 to January 31, 2013. OWCP explained that appellant did not demonstrate that she was required to work beyond her restrictions as the employing establishment provided accommodating work and there was no evidence of a worsening of the condition due to the employment.

On February 18, 2014 counsel requested a telephonic hearing from OWCP's Branch of Hearings and Review, which was held on August 18, 2014. Appellant testified at the hearing and provided a September 10, 2014 report from Dr. Paul M. Puziss, a Board-certified orthopedic surgeon.

By decision dated November 4, 2014, an OWCP hearing representative affirmed OWCP's February 10, 2014 decision. The hearing representative found that, while appellant presented sufficient evidence to establish a factual basis for her claim, none of the examining physicians offered a rationalized medical opinion addressing the worsening of the condition due to the accepted employment factors from April 2010 to January 2013.

In a letter dated and received on October 14, 2015, counsel requested reconsideration. Counsel submitted a September 10, 2014 report from Dr. Puziss, which he contended was not previously considered.

By decision dated November 5, 2015, OWCP denied reconsideration without reviewing the merits of the case.

² OWCP indicated that the claim was ultimately denied.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's 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.⁴ 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.⁵ However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board.⁶ 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.⁷

ANALYSIS

On October 14, 2015 OWCP timely received appellant's request for reconsideration of its November 4, 2014 decision. The question for determination is whether her request met at least one of the three criteria for obtaining a merit review of her case.

The Board finds that appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, she did not advance a relevant legal argument not previously considered by OWCP, and she did not submit relevant and pertinent new evidence not previously considered by OWCP.

Although counsel argued that Dr. Puziss' September 10, 2014 report was not previously considered, the record reflects that it was of record and considered in the hearing representative's November 4, 2014 decision. Counsel has offered no explanation as to how OWCP committed an error and failed to specify any law which OWCP allegedly erroneously applied or interpreted. Evidence or arguments which are duplicative, cumulative, or repetitive in nature are insufficient to warrant reopening a claim for merit review.⁸ Thus counsel's argument is insufficient to warrant consideration on the merits.

³ 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 USC § 8128(a).

⁴ 20 CFR § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *D.G.*, 59 ECAB 455 (2008); *see also C.J.*, Docket No. 12-1570 (issued January 16, 2013).

⁷ *Id.* at § 10.608(b).

⁸ *Denis M. Dupor*, 51 ECAB 482 (2000).

The underlying issue was the medical question of whether appellant has established a worsening of her condition due to the accepted employment factors from April 2010 to January 2013. Appellant offered no relevant and pertinent new evidence on reconsideration.

Appellant has not met any of the criteria warranting reopening her claim for further merit review. Therefore, pursuant to 20 CFR § 10.608, OWCP properly denied merit review.

On appeal counsel argues that OWCP's decision is contrary to fact and law without pointing to specific errors. Additionally, the Board does not have jurisdiction over the merits of the claim on the present appeal.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2016
Washington, DC

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

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

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