

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 17, 2014 appellant, a 60-year-old clerk, filed an occupational disease claim (Form CA-2), alleging that she sustained injuries to both wrists, both knees, both shoulders, neck, back, both hips, both ankles, both ears, and both feet due to repetitive motion in the performance of duty. She stated that she first became aware of her conditions on January 27, 2014 and first attributed them to her federal employment on March 23, 2014.

By decision dated July 29, 2014, OWCP denied appellant's claim finding that she failed to establish fact of injury.

On September 10, 2014 appellant requested reconsideration. In a decision dated November 21, 2014, OWCP modified its decision to find that she had submitted sufficient evidence to establish fact of injury, but failed to establish a causal relationship between her diagnosed conditions and factors of her federal employment.

On March 2, 2015 appellant again requested reconsideration. By decision dated April 22, 2015, OWCP denied modification of its prior decision.

On September 11, 2015 appellant again requested reconsideration and submitted a September 30, 2015 report from Dr. Michael L. Lester, a Board-certified internist, who diagnosed knee strain/sprain, cervical strain, and lumbar strain and noted that appellant had not worked for the employing establishment since April 16, 2014 due to a right knee injury. Dr. Lester reported that on January 27, 2014 during the performance of her duties, walking up a ramp at work, appellant felt a sudden "pop" in her right knee and also suddenly began to experience "pain all over," in her wrists, neck, back, both knees, both shoulders, both hips, both ankles, and both feet.

Appellant also submitted reports dated May 13 through July 22, 2015 from Dr. Marilyn Watts, a retired Board-certified pediatrician practicing Ayurvedic medicine, who diagnosed bilateral rotator cuff syndrome, bilateral bicipital tendinitis, cervical sprain, cervical disc disease, thoracic sprain, lumbar disc disease, lumbar sprain, sciatica, bilateral knee strain/sprain, right Baker's cyst, bilateral osteochondritis, bilateral carpal tunnel syndrome, and cochlear hyperacusis and opined that appellant's conditions were causally related to her federal duties of casing mail, sitting, standing, reaching, and lifting.

By decision dated November 2, 2015, OWCP denied modification of its prior decision as the evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and factors of her federal employment.

On April 1, 2016 appellant again requested reconsideration and submitted a November 19, 2015 report from Dr. Lester, who reiterated the factual history of appellant's claim and diagnosed knee strain/sprain, subsequent encounter, and other tear of the medial

meniscus, current. She also submitted reports dated February 11, March 17, and April 1, 2016 from Dr. Watts, who reiterated her diagnoses and medical opinions, noting that she had previously addressed the issues of causal relationship in her July 22, 2015 report.

By decision dated April 6, 2016, OWCP denied appellant's request for reconsideration. It found that she failed to submit relevant and pertinent new 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. Rather, 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

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 denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a). Appellant did not attempt to demonstrate that OWCP

⁴ *Supra* note 2. 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).

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).

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 March 17, 2016 reconsideration request, appellant submitted reports dated February 11, March 17, and April 1, 2016 from Dr. Watts, who reiterated her diagnoses and indicated that her opinion remained the same as her July 22, 2015 report, which was that appellant's conditions were causally related to her federal duties of casing mail, sitting, standing, reaching, and lifting. The Board finds that submission of these reports did not require reopening appellant's case for merit review. OWCP previously denied appellant's claim based on the lack of supportive medical evidence and these latest reports from Dr. Watts repeat evidence already in the case record. As such, the newly submitted reports from Dr. Watts are cumulative and do not constitute relevant and pertinent new evidence.¹¹ Therefore, they are insufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant also submitted a November 19, 2015 report from Dr. Lester, who reiterated the factual history of appellant's claim and diagnosed knee strain/sprain, subsequent encounter, and other tear of the medial meniscus, current. The Board finds that submission of this evidence did not require reopening appellant's case for merit review as it failed to address the issue of causal relationship between appellant's conditions and factors of her federal employment, which was the issue before OWCP.¹² Therefore, this evidence does not constitute relevant and pertinent new evidence and is also insufficient to require OWCP to reopen the claim for consideration of the merits.

On appeal, appellant's representative argues the merits of the claim and contends that OWCP did not properly review the evidence in the case. However, the Board finds that 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 the OWCP. Because appellant only submitted repetitive evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's case for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹¹ See *supra* notes 6 and 9.

¹² See *supra* note 10.

¹³ See *L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2017
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