

a result of dirty air-conditioning vents in her office. She became aware of her condition on March 28, 2015 and realized that it was causally related to her federal employment on June 14, 2015. Appellant did not stop work.

In a statement dated August 9, 2015, appellant indicated that she was diagnosed with pneumonia on March 28, 2015. She indicated that she started using her office two weeks prior, which was in an internal space, and it was necessary to keep the door closed during interviews. Appellant noted that she performed interviews about 15 hours a week in an office without cross ventilation. She indicated that she missed eight days of work and continued to be followed by a physician.

Appellant submitted March 28, 2015 note from Dr. Phillip Hubel, Board-certified in emergency medicine, who treated her on March 28, 2015 for a medical concern and advised that she could not participate in physical training activities for a week.

Appellant was treated by Dr. Michele Leder, a Board-certified internist, on March 30, 2015, who noted that she was ill and was unable to work from March 30 to April 2, 2015. On April 2, 2015 Dr. Leder noted treating appellant for many years and indicated that on March 28, 2015 she was treated for pneumonia. She advised that appellant was progressing well and would have ongoing evaluations.

Appellant was treated by Dr. Bruce Levitt, an osteopath, on August 16, 2015 for mycoplasma pneumonia. She reported that coworkers had the same medical condition. Dr. Levitt recommended evaluating the work setting to determine if steps should be taken to prevent this from occurring again.

By letter dated October 5, 2015, OWCP requested that appellant submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury.

Appellant submitted a November 2, 2015 report from Dr. Levitt who treated appellant since July 2015 for mycoplasma pneumonia which was diagnosed by chest x-ray. She reported other people in her work setting were also ill. Dr. Levitt indicated that it was not unreasonable to conclude that pneumonia was acquired in her work setting.

In an undated statement, appellant indicated that she was moved from a cubicle to an office in March 2015. She noted that the office was used as a storage space prior to her relocation. Appellant was diagnosed with pneumonia on March 28, 2015 and she believed it was due to a pathogen in her office. She indicated that the office was not properly ventilated and she conducted interviews with the door closed for several hours a day. Appellant noted not being exposed to irritants outside of work and indicated that she has mild exercise-induced asthma controlled with medicine.

In a decision dated November 30, 2015, OWCP denied appellant's claim finding that, while she had established the employment factors occurred, she did not provide sufficient medical evidence to establish that her claimed condition was causally related to the established work factors.

On October 25, 2016 appellant requested reconsideration and submitted an Occupational Safety and Health Indoor Air Quality Assessment. The assessment noted that there was inadequate ventilation in the offices, the supply vents were not operating, the return vent was visibly soiled with dust and debris and the surfaces in the space were covered with dust and debris. The heating, ventilation and air-conditioning filtration system was determined to be operating effectively.

In a January 17, 2017 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(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.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP denied appellant's occupational disease claim because she failed to establish that her claimed medical condition was related to the established work-related events. Thereafter, it denied appellant's reconsideration request, without a merit review.

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 the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously reviewed by OWCP. She submitted an Occupational Safety and Health Indoor Air Quality Assessment and referenced the air quality in her office and the photographs

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608(b).

and charts. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant developed an occupational disease causally related to factors of her employment. That is a medical issue which must be addressed by relevant new medical evidence.⁵

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant, as noted, submitted an Occupational Safety and Health Indoor Air Quality Assessment. While this assessment is new to the record, this factual report is not relevant because the underlying issue, causal relationship, is medical in nature.⁶ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁷ OWCP denied the claim because appellant did not submit sufficient medical evidence to establish that her workplace exposure caused or aggravated her claimed condition. Submission of this factual report is not relevant to the underlying medical issue. Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

On appeal appellant asserts that her request for reconsideration was timely filed within one year of the decision dated November 30, 2015 and therefore her request was declined in error. The Board notes that her timely request for reconsideration was denied because the evidence submitted was insufficient to warrant a merit review, not because it was untimely filed.

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 new 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 reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ See *W.D.*, Docket No. 09-658 (issued October 22, 2009) (causal relationship is a medical issue).

⁷ *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2017
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