

cervical radiculopathy and cervicalgia. She asserted that the conditions were caused by carrying out her repetitive work duties over a period of time, including overhead casing of mail and processing of parcels.² Appellant indicated that she first became aware of her claimed condition on March 15, 2013 and first realized on June 30, 2015 that it was caused or aggravated by factors of her federal employment. She did not stop work.

Appellant submitted March 15, 2013 x-ray testing of her neck showing degeneration between the C4 and C6 discs. A June 30, 2015 electromyogram (EMG) and nerve conduction velocity (NCV) study of her upper extremities contained an impression of cervical polyneuropathy, mostly affecting the right C5, C6, and C7 areas, and bilateral median neuropathy consistent with mild bilateral carpal tunnel syndrome.

In a January 22, 2016 report, Dr. Estella F. Martinez, an attending Board-certified family practitioner, noted that appellant reported she had worked for the employing establishment for 22 years and that she engaged in repetitive typing in her current job as a claims and inquiry clerk. Appellant reported that she first noticed pain in both hands, greater in the right hand, in January 2014. Dr. Martinez reported the findings of her physical examination on September 24, 2014. She diagnosed several cervical, upper extremity, and back conditions, including lumbar disc lesion and other intervertebral lumbar disc disorders, bilateral carpal tunnel syndrome, left cervical radiculopathy, and superior glenoid labrum lesion of her right shoulder. Dr. Martinez opined that these medical diagnoses were causally related to appellant's employment activities.

In a June 2, 2016 letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how her employment activities caused, contributed to, or aggravated her medical condition.

Appellant submitted a July 28, 2016 report of Dr. John Sonnenberg, an attending Board-certified orthopedic surgeon, in which he indicated that she reported previously performing heavy work as a distribution clerk for almost 20 years. This work included frequent lifting and overhead mail casing, pushing and pulling mail containers, and loading tractor trailers. Dr. Sonnenberg noted that appellant presented complaining of neck and right upper extremity pain and he reported the findings of his physical examination on July 28, 2016. He advised that his diagnostic impression was cervical radiculopathy, which seemed to have resolved, periscapular myositis around the right shoulder girdle, which might be due to the reported lifting activities, and right shoulder subacromial impingement syndrome. Dr. Sonnenberg noted that, given appellant's long history of problems with her neck and right shoulder girdle, the periscapular myositis was "most likely work related due to the lifting activities." He further indicated that, since appellant did not have a specific injury to her right shoulder, it was doubtful that the right shoulder impingement syndrome was related to work activities.

² In an accompanying statement, appellant provided a more extensive description of her work duties. She indicated that between 1993 and 2013 she worked as a distribution clerk and was required to frequently lift and case mail, push and pull mail containers, and load and unload mail from tractor trailers. Appellant noted that she had to lift, push, or pull up to 70 pounds in her work as a distribution clerk. She had been performing desk duties as a claims and inquiry clerk since December 2013.

In an August 3, 2016 decision, OWCP denied appellant's claim for an occupational disease. It noted that appellant had established exposure to employment factors as alleged, including lifting/casing mail and moving mail containers, but found that she had not established that she sustained a diagnosed condition due to the accepted employment factors. OWCP noted that attending physicians diagnosed multiple medical conditions but that they did not adequately explain how these conditions were related to specific employment factors.

In a form dated December 2, 2016 and received on December 9, 2016, appellant requested reconsideration of OWCP's August 3, 2016 decision.

In a December 22, 2016 decision, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that, because appellant's December 9, 2016 request for reconsideration neither raised substantive legal questions, nor included new and relevant evidence, it was insufficient to warrant a review of its August 3, 2016 decision.

In an undated letter, received on April 26, 2017, appellant indicated that she was again requesting reconsideration.³ She advised that she had obtained new and relevant evidence in support of her claim and that she had included new magnetic resonance imaging (MRI) scan and EMG study results and a letter from an orthopedic surgeon, Dr. Morgenstern, in support of her reconsideration request. Appellant submitted copies of OWCP's August 3, and December 22, 2016 decisions.

In a May 4, 2017 decision, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that, because appellant's April 26, 2017 request for reconsideration neither raised substantive legal questions, nor included new and relevant evidence, it was insufficient to warrant a review of its August 3, 2016 decision.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶ A timely application for reconsideration, including all supporting documents, must set

³ On April 26, 2017 OWCP also received a form dated March 21, 2017 in which appellant requested reconsideration of its December 22, 2016 decision.

⁴ This section provides in pertinent part: "[t]he 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 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a 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

OWCP issued a merit decision on August 3, 2016. Appellant timely requested reconsideration of this decision on April 26, 2017.

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, nor did she advance a new and relevant legal argument not previously considered by OWCP. In her reconsideration request received on April 26, 2017, appellant indicated that she had obtained new and relevant evidence in support of her claim she submitted a new MRI scan and EMG study results and a letter from an orthopedic surgeon. However, no such evidence was received by OWCP. The underlying issue in this case was whether appellant submitted sufficient medical evidence to establish that she sustained a diagnosed medical condition due to the accepted employment factors.¹¹ That is a medical issue which must be addressed by relevant medical evidence.¹² A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in this case.

Appellant submitted copies of OWCP's August 3 and December 22, 2016 decisions. However, the submission of these documents would not require reopening of appellant's claim for merit review because the documents were already in the record and would not be relevant to the above-noted main issue of the present case, *i.e.*, whether appellant submitted sufficient

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

⁹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

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

¹¹ OWCP accepted that, prior to the filing of her occupational disease claim on April 25, 2016, appellant performed repetitive work duties over a period of time, including lifting/casing mail and moving mail containers.

¹² *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

medical evidence in support of her claim. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, 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).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹³ See *supra* notes 9 and 10. On appeal appellant argues that she submitted new and relevant evidence which necessitated reopening of her claim for merit review, but the Board has explained why she did not submit such evidence.