

conditions, including atrial tachycardia, flutter, and fibrillation, due to her federal employment duties. She stated that the repetitive stress of her window clerk duties of handling customer complaints resulted in an aggravation of her conditions. Appellant indicated that she first became aware of her condition and attributed it to her federal employment on April 26, 2010. Initially, on April 2, 2012, OWCP disallowed her claim as a new injury, administratively doubled it with a previous work injury under File No. xxxxxx655, and closed the claim. Thereafter, an OWCP hearing representative found that the claim should be considered as a new occupational disease claim and reversed the April 2, 2012 decision. By decision dated June 26, 2012, OWCP accepted appellant's claim for atrial flutter, paroxysmal atrial tachycardia, and atrial fibrillation. It placed her on the periodic rolls effective August 26, 2012 for part-time wage loss, noting that she was working as a window service technician five hours per day, five days a week.

On January 16, 2014 appellant accepted a modified window clerk position for five hours per day, five days a week. The duties included working on bid assignments and required lifting, carrying, standing, walking, simple grasping, and fine manipulation for four to five hours per day.

In a June 17, 2014 report, Dr. Christopher Cole, a Board-certified cardiologist, noted that appellant continued to have intermittent palpitations caused by work-related stress. He opined that appellant's established window clerk duties caused her autonomic nervous system to produce catecholamines, which drove her arrhythmias. Dr. Cole advised that appellant was capable of working five hours per day without any work restrictions.

On October 23, 2014 appellant filed claims for disability compensation (Form CA-7) for the period September 29 to November 18, 2014. She submitted a September 29, 2014 report from Dr. Cole who noted that appellant's arrhythmias were caused by employment-related stress and anxiety due to her federal duties. Dr. Cole found that appellant had recently been experiencing an exacerbation of her arrhythmias, which was correlated with a work-related stress pattern. He recommended that appellant work three hours per day, five days a week, until her next clinical visit on October 22, 2014.

In a September 26, 2014 report, a physician assistant noted that appellant sustained atrial fibrillation due to work-related stress and had been advised to curtail her work shifts to three hours per day, five days a week, until her next visit to see if it improved her symptoms.

On November 4, 2014 Dr. Cole indicated that appellant had been under his care since January 2006 for arrhythmias caused by work-related stress from her federal window clerk duties. He found that appellant had recently been experiencing an increase in the frequency and duration of her palpitations secondary to having increased responsibilities and stress from persistent understaffing at the employing establishment. Dr. Cole explained that the decision to decrease her work hours "was to protect her from the stress that ha[d] been established to cause her arrhythmias." He found that symptomatically appellant had been doing much better with this temporary decrease in hours and would return to working five hours per day on November 30, 2014.

Appellant accepted a modified job offer as a lead sales and services associate on December 5, 2014. The position required five-hour work shifts, five days a week, with the following restrictions: lifting one to two hours per day; standing, walking, and sitting for four to

five hours per day; bending, twisting, pushing, and pulling for one hour per day; and grasping for three hours per day.

OWCP referred appellant to Dr. Adam Strunk, a Board-certified cardiologist, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. In his December 9, 2014 report, Dr. Strunk found that appellant was capable of returning to her date-of-injury position. He noted Dr. Cole's opinion that appellant's condition was due to stress at work and explained that it was likely that she would continue to have arrhythmias when working longer and busier shifts.

By decision dated December 29, 2014, OWCP denied appellant's claim for disability compensation for the period September 29 to November 18, 2014. It found that she had been placed on the periodic rolls and received wage-loss compensation based on three hours of wage loss per day and subsequently claimed an additional two hours of wage-loss compensation. OWCP explained that her request to add an additional two hours of wage loss for the period September 29 to November 18, 2014 was denied because the medical evidence of record failed to establish disability for the additional period claimed.

Appellant requested a review of the written record by a representative of the Branch of Hearings and Review and resubmitted a June 17, 2014 report from Dr. Cole in support of her claim.

By decision dated June 9, 2015, an OWCP hearing representative conducted a review of the written record and affirmed the prior decision, finding that no medical evidence of record established that appellant sustained a recurrence of disability such that her partial disability increased for the period September 29 to November 18, 2014 due to her employment injury.

OWCP referred appellant to Dr. John Boerner, a Board-certified cardiologist, for another second opinion evaluation to determine the nature and extent of her employment-related conditions. In his July 7, 2015 report, Dr. Boerner diagnosed atrial and ventricular arrhythmias and found that appellant was capable of working five hours per day in a position with no significant emotional or physical stress.

On September 2, 2015 appellant accepted a modified job offer as a lead sales and services associate working five hours per day, five days a week, with the following restrictions: lifting one to two hours per day; standing, walking, and sitting for four to five hours per day; bending, twisting, pushing, and pulling for one hour per day; and grasping for three hours per day.

On October 29, 2015 appellant requested reconsideration and submitted hospital records dated June 17, 2015 regarding her emergency room visit for rapid heartbeat, palpitations, lightheadedness, and shortness of breath. She also submitted an October 21, 2015 report from Dr. Cole who noted that she was working three hours a day from September 29 to November 18, 2014 due to an exacerbation of her arrhythmias, which were caused by stress at work. Dr. Cole opined that appellant's exacerbation of her arrhythmias were consequential to her prior work injury.

By decision dated December 11, 2015, OWCP denied modification of its prior decision.

On February 17, 2016 appellant requested reconsideration, arguing that OWCP had failed to consider all the evidence properly submitted and that her arrhythmias were consequential to her prior injury. In support of her request, she submitted a July 31, 2008 report from Dr. Cole reiterating her medical history and a September 26, 2014 report opined that she had sustained atrial fibrillation induced by work-related stress. Dr. Cole advised appellant to work no longer than three hours per day, five days a week. Appellant also resubmitted her modified job offer dated September 2, 2015, hospital records dated June 17, 2015, and a June 17, 2014 report from Dr. Cole.

By decision dated August 1, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim because she failed to advance a relevant legal argument or submit any relevant and pertinent new evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ 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.⁴ A timely application for reconsideration, including all supporting documents, must set 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.⁵ 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.⁶

ANALYSIS

Appellant's February 17, 2016 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP. Appellant argued that OWCP had failed to consider all the evidence properly submitted and that her arrhythmias were consequential to her prior injury. The Board, however, finds that

² 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).

³ 20 C.F.R. § 10.607.

⁴ *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.

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(a), (b).

OWCP properly considered all of the evidence of record before denying appellant's claims for disability in its December 11, 2015 decision. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Along with her reconsideration request, appellant submitted reports dated July 31, 2008 and September 26, 2014 from Dr. Cole who reiterated her medical history and opined that she had sustained atrial fibrillation induced by work-related stress. Dr. Cole advised her to work no longer than three hours per day, five days per week. The Board finds that submission of these reports did not require reopening appellant's case for merit review. As OWCP denied appellant's claim based on the lack of supportive medical evidence establishing an additional two hours of wage-loss compensation for disability during the period September 29 to November 18, 2014 and these reports repeat evidence already in the case record, they are cumulative and fail to constitute relevant and pertinent new evidence. Therefore, they are not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.⁷

In support of her request for reconsideration, appellant resubmitted a June 17, 2014 report from Dr. Cole and hospital records dated June 17, 2015. The Board finds that the submission of this evidence did not require reopening appellant's case for merit review because appellant had submitted the same evidence, which was previously reviewed by OWCP in its prior decisions. More specifically, the Board finds that the content of Dr. Cole's June 17, 2014 report was considered by OWCP in its decisions dated December 29, 2014 and June 9, 2015 and the June 17, 2015 hospital records were considered by OWCP in its decision dated December 11, 2015. As the documents 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.⁸

Appellant also resubmitted her modified job offer dated September 2, 2015. The Board finds that the submission of this document did not require reopening appellant's case for merit review because appellant had submitted the same evidence, which was previously reviewed by OWCP in its December 11, 2015 decision. As the statement repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence.⁹

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3). Thus, it properly denied her request for reconsideration.

⁷ See *L.H.*, 59 ECAB 253 (2007).

⁸ See *D.K.*, 59 ECAB 141 (2007).

⁹ *Id.*

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 August 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2018
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