

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 21, 2007 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2007 she sustained injury when her parked postal vehicle was rear ended by another vehicle while in the performance of duty.⁵ She did not stop work, but began performing light-duty work. OWCP accepted appellant's claim for neck sprain, thoracic sprain, and sprain of shoulder/upper arm (unspecified site).

Appellant previously filed a claim under OWCP File No. xxxxxx589, alleging injury due to an October 15, 1986 motor vehicle accident at work. OWCP accepted that prior claim for cervical and lumbar strains, and she began performing light-duty work after October 15, 1986. On November 30, 2010 the employing establishment advised appellant that, pursuant to the National Reassessment Process (NRP), it was withdrawing her light-duty work because it was unable to identify work duties within her medical restrictions.⁶ OWCP administratively combined the files for OWCP File Nos. xxxxxx374 and xxxxxx589 and has designated OWCP File No. xxxxxx589 as the master file.

In an April 14, 2008 duty status report (Form CA-17), Dr. Marjorie Lewis, a Board-certified family practitioner, listed the date of injury as December 19, 2007 and indicated that appellant's cervical, thoracic, and shoulder sprains had resolved. She released appellant to full-time work without restrictions as of April 14, 2008.⁷

In a January 26, 2011 report, Dr. Morry Fox, a Board-certified family practitioner and osteopath, indicated that appellant suffered from brachial neuritis, cervical ligamentous strain, and

⁴ Docket No. 19-1123 (issued October 29, 2019).

⁵ OWCP assigned File No. xxxxxx374.

⁶ Appellant filed claim for compensation forms (Form CA-7) alleging disability for the period January 1, 2011 and continuing due to her October 15, 1986 employment injury and, by decision dated February 22, 2011, OWCP denied her claim as she did not submit medical evidence sufficient to establish disability for the claimed period. This matter is not the subject of the present appeal.

⁷ Appellant did not return to regular-duty work at that time, but she continued working in light-duty positions designed to accommodate the work restrictions related to her previous October 15, 1986 employment injury. In April 2009, she commenced working on a full-time basis in a modified carrier position which required intermittent lifting and carrying for up to five hours per day.

dorsal myositis. He advised that it was undetermined when appellant would return to full-duty work.

On July 7, 2015 appellant filed a Form CA-7 claiming disability for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury. She asserted that the disability occurred because her light-duty work was withdrawn in late-2010 under the NRP.

In a July 14, 2015 development letter, OWCP requested that appellant submit evidence in support of her disability claim, including a medical report containing an opinion that her December 19, 2007 employment injury caused disability for the period January 15 through May 7, 2011. It afforded her 30 days to respond.

In response, appellant submitted a September 30, 2014 report from Dr. Melvyn G. Drucker, a Board-certified orthopedic surgeon, who diagnosed multilevel cervical spondylitic changes and lumbar derangement, and indicated that she could work with restrictions.

In an August 10, 2015 letter, appellant's then-representative asserted that appellant sustained employment-related disability for the period January 15 through May 7, 2011 because the employing establishment withdrew light-duty work under the NRP in late-2010.

By decision dated September 15, 2015, OWCP denied appellant's claim for compensation as she did not submit medical evidence sufficient to establish disability for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury.⁸ It referenced the argument that the employing establishment's withdrawal of light-duty work under the NRP caused disability for the claimed period, but noted that she did not have any work restrictions related to her December 19, 2007 employment injury prior to the withdrawal of light-duty work.

On September 24, 2015 appellant, through her then-representative, requested a hearing with a representative of OWCP's Branch of Hearings and Review.⁹ During the hearing held on May 4, 2016, appellant's representative continued to argue that appellant sustained disability in 2011 due to withdrawal of light-duty work under the NRP.

By decision dated June 8, 2016, OWCP's hearing representative affirmed the September 15, 2015 decision. The hearing representative noted that there was no evidence that appellant was working in a modified-duty position designed to accommodate her December 19, 2007 employment injury when the employing establishment withdrew light-duty work in late-2010.

⁸ OWCP inadvertently listed the claimed period of disability as January 5 through May 7, 2011, rather than the actual claimed period of January 15 through May 7, 2011.

⁹ Appellant subsequently submitted a January 14, 2016 report from Dr. Stephen S. Wender, a Board-certified orthopedic surgeon, who diagnosed resolved cervical and lumbar sprains/strains and resolved internal derangement of the shoulders. Dr. Wender indicated that she could return to regular duty.

Appellant appealed to the Board and, by decision dated October 29, 2019,¹⁰ the Board affirmed OWCP's June 8, 2016 decision.

On July 23, 2020 appellant requested reconsideration of the denial of her claim for disability for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury. In a July 23, 2020 statement, she argued that the medical evidence of record, particularly several reports of Dr. Fox, established disability for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury.¹¹ Appellant also asserted that, between June 10, 1992 and April 10, 2007, her attending physicians produced at least 37 reports with the diagnoses of brachial neuritis and cervical neuritis, and she suggested that this circumstance established her disability claim. She further alleged that her disability claim for the period January 15 through May 7, 2011 should be accepted because her light-duty work was withdrawn in late-2010 under the NRP.

By decision dated July 24, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.¹²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens

¹⁰ *Supra* note 4.

¹¹ Appellant discussed several reports of Dr. Fox dated between May 14, 1992 and November 8, 2011.

¹² 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹³ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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. The one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. *Id.* at Chapter 2.1602.4a.

and reviews the case on its merits.¹⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁶

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁸

ANALYSIS

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).

In a July 23, 2020 statement submitted in support of her timely reconsideration request, appellant argued that the medical evidence of record, particularly several reports of Dr. Fox, demonstrated that she had disability for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury. She also asserted that her attending physicians produced numerous reports containing the diagnoses of brachial neuritis and cervical neuritis, and she suggested that this circumstance established her disability claim. Appellant further alleged that her disability claim for the period January 15 through May 7, 2011 should be accepted because her light-duty work was withdrawn in late-2010 under the NRP. However, OWCP previously considered and rejected these same arguments when it previously denied appellant's claim that she was disabled for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury. As noted above, the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁹ Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant did not submit any additional evidence in support of her claim that she was disabled for the period January 15 through May 7, 2011 causally related to her accepted December 19, 2007 employment injury. Therefore, she also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board therefore finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

¹⁵ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁶ 20 C.F.R. § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁸ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁹ *See supra* note 17.

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 July 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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