



appeal, pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>4</sup>

### **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**

On June 29, 2017 appellant, then a 58-year-old park ranger, filed an occupational disease claim (Form CA-2) alleging that she developed mold-induced asthma, tachycardia palpitations, flu-like symptoms, and poor brain function due to her workplace exposure to a leaking air conditioning unit, which caused black mold to form on the furniture, floors, walls, drapes, and other interior spaces of her small workstation. She indicated that she first became aware of her condition and its relation to her federal employment on June 6, 2017. Appellant stopped work on June 8, 2017.

In a July 25, 2017 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information including comments from a knowledgeable supervisor and an explanation of appellant's work activities and exposure. It afforded both parties 30 days to submit the necessary evidence.

In a report dated August 7, 2017, Dr. Murali Sharath, a Board-certified internist, diagnosed upper respiratory symptoms and asthma.

In an August 24, 2017 response to OWCP's development questionnaire, the employing establishment indicated that there were dark spots on the wall and floor of appellant's duty station that had not been clinically identified. It noted that she worked in a fee booth that was approximately 10 feet square and was required to frequently open a service window to converse with visitors. The employing establishment found that appellant was exposed to moisture issues due to air conditioning unit drainage issues with resulting dark spots on the floor, wall, curtain, and chair within her workspace. It noted that it did not have the final results of studies to determine the presence and species of mold within appellant's duty station.

An August 30, 2017 indoor environmental assessment of appellant's workspace found mold due to elevated humidity and chronic added moisture from the air conditioner leak. The molds identified included aspergillus/penicillium and cladosporium amplified inside the

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the August 20, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

workspace when compared to outdoor air, while stachybotrys was growing beneath the air conditioner. The study noted that there were no national standards for the number of fungal spores that may be present in an indoor environment, but that it was widely accepted that indoor air quality should not exceed the number and types of mold that are present outdoors at any given time. It further noted that the molds found were the most common indoor allergens. The study noted that aspergillus/penicillium contained common allergens and may cause hypersensitivity pneumonitis as well as producing mycotoxins, which may be associated with disease in humans. It further noted that cladosporium was a common allergen producing more than 10 allergenic antigens and a common cause of hypersensitivity pneumonitis. The study reported that stachybotrys chartarum produced potent tricothecene mycotoxins, which could suppress the immune system affecting the lymphoid tissue and the bone marrow. The mycotoxin was also reported to be a liver and kidney carcinogen.

On September 2, 2017 appellant provided a narrative statement addressing her exposure to an improperly installed air conditioner unit with drainage indoors behind the walls. Due to the water condensation, mold formed on the furniture, floors, and equipment. Appellant attributed her asthma, heart palpitations, and anxiety to this exposure.

By decision dated December 29, 2017, OWCP denied appellant's occupational disease claim, finding that she failed to provide medical evidence establishing causal relationship between her diagnosed conditions and her accepted employment exposures. On January 25, 2018 appellant, through counsel, requested a telephonic hearing from a representative of OWCP's Branch of Hearings and Review.

In a May 14, 2018 note, Bee Valvo, a family nurse practitioner, provided diagnoses of additional conditions. A telephonic hearing was held on July 9, 2018.

By decision dated September 20, 2018, OWCP's hearing representative affirmed OWCP's December 29, 2017 decision.

On January 11, 2019 appellant informed OWCP that she had her right kidney removed due to carcinoma and attributed this condition to mold exposure. She also noted that she had experienced a heart attack, been diagnosed with small airway disease, and irritable bowel symptoms.

In an attending physician's report (Form CA-20) dated January 17, 2017, Dr. M. Azam Khan, a Board-certified surgeon, noted appellant's history of exposure to mold from April 2 through October 31, 2017. He reported that she developed cancer of the right kidney in August 2018 and experienced stroke, seizures, and heart arrhythmia. Dr. Khan noted that appellant's asthma was aggravated and she developed airway disease. He diagnosed autoimmune disease of the digestive tract. Dr. Khan indicated by checking a box marked "Yes" that he believed that her condition was caused or aggravated by employment, but added "Maybe." He recommended that appellant be evaluated by a physician specializing in environmental exposure to mold.

On July 17, 2019 appellant, through counsel, requested reconsideration of the September 20, 2018 decision and submitted a report from Dr. Lynese L. Lawson, an osteopath

specializing in family medicine, as well as excerpts from medical publications. In the July 10, 2019 report, Dr. Lawson noted her symptoms of seizures, hair loss, a mass on her right kidney, shortness of breath, brain fog, nightmares, small airway disease, autoimmune disease, significantly impaired cognitive thinking, and myocardial infarction. She asserted that appellant had not experienced these health issues prior to her employment exposure to mold while working as a federal ranger. Dr. Lawson found that her symptoms were consistent with chronic inflammatory response syndrome (CIRS), an illness induced and worsened by exposure to molds. She opined that it was more probable than not that appellant's diagnosed CIRS was directly caused by the exposure to toxic mold at her former place of employment as a forest ranger.

By decision dated August 12, 2019, OWCP denied modification of its prior decisions, finding that appellant had not provided rationalized medical opinion evidence supporting causal relationship between her accepted employment exposures and her diagnosed conditions.<sup>5</sup>

On February 18, 2020 appellant requested reconsideration of the August 12, 2019 decision and summarized publications addressing toxic mold exposure. She also submitted a series of medical publications, articles, and studies addressing sick building syndrome, damp indoor spaces, and resulting bacteria, mold, and fungal exposure.

In a January 5, 2020 report, Dr. Lawson repeated her diagnosis of CIRS and again opined that it was more probable than not that appellant's diagnosed CIRS was directly caused by the exposure to toxic mold at her former place of employment.

By decision dated August 20, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that her request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

### **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.<sup>6</sup>

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.<sup>7</sup>

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<sup>5</sup> On October 1, 2019 the Office of Personnel Management approved appellant's application for disability retirement due to atrial fibrillation and CIRS.

<sup>6</sup> 5 U.S.C. § 8128(a); *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).

<sup>7</sup> 20 C.F.R. § 10.606(b)(3); *L.D., id.*; *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>8</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>9</sup> 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.<sup>10</sup>

### 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).

Appellant's February 18, 2020 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered.

In support of her reconsideration request, appellant submitted a January 5, 2020 report from Dr. Lawson repeating her diagnosis of CIRS and opining that this condition was caused by the exposure to toxic mold at her former place of employment. This report was duplicative and cumulative of Dr. Lawson's July 10, 2019 report. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup>

Appellant also submitted excerpts of medical publications, studies, and reports. The Board has held that excerpts of publications medical or otherwise are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions or disability were the result of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.<sup>12</sup> As appellant did not

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<sup>8</sup> *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 its 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.

<sup>9</sup> *Id.* at § 10.608(a); *see also* *J.R.*, Docket No. 20-0887 (issued May 26, 2021); *M.S.*, 59 ECAB 231 (2007).

<sup>10</sup> *Id.* at § 10.608(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

<sup>11</sup> *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>12</sup> *I.M.*, Docket No. 19-1189 (issued November 16, 2020); *C.S.*, Docket No. 14-1994 (issued June 26, 2015); *D.C.*, Docket No. 13-1713 (issued November 20, 2013); *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

submit a physician's opinion interpreting the medical publications, she failed to submit relevant and pertinent new medical evidence. OWCP is not required to review a claimant's claim on the merits when the evidence or argument submitted on reconsideration does not address the particular issue involved.<sup>13</sup>

Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, 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.

### **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 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> *IM., id.*; *J.F.*, Docket No. 16-1233 (issued November 23, 2016); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).