

and construction on the premises where she worked. She became aware of her condition on November 27, 2013 and related it to factors of her federal employment on December 11, 2013. Appellant stopped work on December 12, 2013.

Appellant was treated by Dr. Michael B. Miller, an osteopath, on December 1, 2013, for chest tightness, chest burning mid sternum and shortness of breath worsening on exertion. She indicated that her symptoms worsened as her workday progressed and resolved when she left work. Appellant denied a history of asthma. In a December 11, 2013 examination with Dr. Miller, appellant reported that construction was ongoing in an overhead area and that the carpet in her work area had been removed causing an increased level of spores. Dr. Miller recommended an alternate work area. On April 2, 2014 he advised that appellant's multiple sclerosis was aggravated by environmental exposures.

Appellant was treated by Dr. Donovan Christie, a Board-certified internist, on December 11, 2013 for shortness of breath and prescribed a nebulizer to relieve her reactive airway presentation. Appellant reported that there was a construction project underway at her workplace. Dr. Christie recommended appellant take two days of leave to ease her exposure to allergens. On January 16, 2014 he treated her for multiple episodes of respiratory distress due to caustic fume exposure on December 11 and 16, 2013 through the air vents at work. Dr. Christie recommended changing appellant's work environment to a remote location away from noxious fumes and indicated that further exposure would damage appellant's health. He opined that her current illness was the result of exposure to elements in her workplace. Dr. Christie indicated appellant would be disabled until her work environment changed. In a report dated April 14, 2014, he opined that she was exposed multiple times to caustic fumes and mold spores performing her daily work tasks which affected her respiratory system and neurological functioning. Dr. Christie requested reasonable accommodations and that appellant's workstation be moved. He diagnosed systemic mycosis, sleep disturbance, gait abnormality, stress, shortness of breath, respiratory conditions, and multiple sclerosis.

In a decision dated May 14, 2014, OWCP denied appellant's claim because the evidence did not support that the exposure had occurred as alleged. On March 27, 2015 appellant requested reconsideration.

Appellant submitted a June 10, 2014 report from Dr. Christie who diagnosed reactive airway disease and occupational asthma. Dr. Christie noted that appellant presented with hoarseness and shortness of breath with marked decrease in lung capacity. He recommended that she be moved to another building. On February 26, 2015 Dr. Christie treated appellant for severe reactive airway disease. He noted that she worked in an area of the hospital which was undergoing major construction and renovation which created environmental changes that adversely affected appellant. Dr. Christie diagnosed occupationally-induced asthma and mycosis. He advised that appellant had been permitted to telework and her condition had gradually improved.

Appellant submitted a September 26, 2013 employing establishment construction bulletin which informed personnel of construction activity where appellant worked from September 28 to November 14, 2013. A March 27, 2014 environmental spore trap reported no detectable fungal spores in the work area.

On July 22, 2015 OWCP vacated the May 14, 2014 decision. It determined that new factual and medical evidence submitted established that appellant was exposed to allergens in the workplace which caused her injury. In a second decision of even date, OWCP accepted appellant's claim for asthma reactive airway disease.

On August 11, 2015 appellant filed a claim for compensation (Form CA-7) for total disability, for the period February 24 to September 30, 2014.² The employing establishment advised that she returned to work on May 5, 2014. In a letter dated September 29, 2015, OWCP asked the employing establishment to address any periods of wage loss after appellant returned to work on May 5, 2014. On November 16, 2015 the employing establishment commented that she should not be entitled to compensation after she had returned to work.

In a decision dated November 16, 2015, OWCP granted appellant's claim for compensation for the period February 24 to May 4, 2014 but denied her claim for compensation for the period May 5 to September 30, 2014. It advised that she had returned to work on May 5, 2014 and had no entitlement to compensation at that point.

On June 2, 2016 appellant requested reconsideration. She sought compensation for doctor visits after she returned to work. Appellant indicated that reports from Dr. Miller and Dr. Christie supported that she had environmental exposure to allergens while her workplace was undergoing construction which caused her pulmonary condition. She noted that she did not have a history of pulmonary conditions and documentation revealed that when she returned to the building she experienced bronchospasm, hoarseness, and shortness of breath requiring additional treatment. Appellant indicated that the employing establishment granted reasonable accommodation for her to telework and her pulmonary status had improved, but that she continued to treat with Dr. Christie two to three times a week to monitor her condition. She submitted a claim for reimbursement for these appointments.

Appellant submitted a proficiency report dated May 25, 2016 in which she was rated as highly satisfactory.

Appellant submitted health care certificates from Dr. Christie dated December 18, 2013, April 16, 2015, and May 18, 2016. These reflect treatment for shortness of breath, dyspnea on exertion, hoarseness, chest tightness, and pulmonary function compromise. Dr. Christie noted that this was a lifetime condition with continuing exposure to allergens. He advised that appellant could not perform her job functions due to her condition and would require treatment visits and medication throughout the year.

In reports dated June 4, 2015 and January 28, 2016, Dr. Christie indicated that on November 27, 2013 appellant had developed a severe case of reactive airway disease due to her exposure at work and had a medical history significant for multiple sclerosis. He indicated that due to major construction and renovation at appellant's workplace her pulmonary problems were exacerbated when she entered the hospital. Dr. Christie noted that appellant has undergone extensive treatment and aggressive intravenous therapy. He opined that it was a medical necessity for appellant to have high efficiency heating and air-conditioning units at home to

² The record indicates that appellant used sick and annual leave for her work absences before February 24, 2014.

maintain air quality and her pulmonary function needs. Dr. Christie advised that appellant continued to be monitored with office visits and additional treatments including injections two to three times a week and has gradually improved.

In an August 3, 2016 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review. It found that the submitted evidence was irrelevant or immaterial to the issue of appellant's claimed employment-related total disability.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ 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 the OWCP;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

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.⁵

ANALYSIS

OWCP denied appellant's claim for compensation for the period May 5 to September 30, 2014 as appellant had returned to work and the medical evidence did not demonstrate that any disability was due to her accepted work injury. Thereafter, it denied her 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. In her May 19, 2016 reconsideration request she sought payment for doctor visits after she returned to work. However, appellant did not include dates on

³ *Supra* note 1 at § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b).

which she sought medical treatment for her accepted condition during the claimed period of May 5 to September 30, 2014.

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence. Appellant submitted certificates of health care provider dated December 18, 2013, April 16, 2015, and May 18, 2016 from Dr. Christie who treated her for shortness of breath, dyspnea on exertion, hoarseness, chest tightness, and pulmonary function compromise. Dr. Christie noted that appellant could not perform her job functions due to her condition and would require treatment visits and medication throughout the year. Similarly, in reports dated June 4, 2015 and January 28, 2016, he indicated that appellant developed severe reactive airway disease on November 27, 2013 due to exposure to major construction at her workplace. Dr. Christie noted her course of treatment and advised that appellant continued to be monitored with office visits and additional treatments as needed and has gradually improved. Although these reports are new, they are not relevant because they do not address disability for the claimed period from May 5 to September 30, 2014 causally related to her accepted condition. Submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁶ Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

Appellant submitted a proficiency report dated May 25, 2016 in which she was rated as highly satisfactory. This document is not relevant to the underlying issue of whether appellant had any period of disability from May 5 to September 30, 2014 causally related to her accepted condition.⁷ Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

On appeal, appellant asserts that she was entitled to leave without pay for the time she sought medical treatment for her accepted condition after returning to work. As explained, the Board does not have jurisdiction over the merits of the claim.

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).

⁶ See *J.G.*, Docket No. 16-1576 (issued November 18, 2016); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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