

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Capitol Heights, MD, Employer**

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**Docket No. 13-1154  
Issued: July 29, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 12, 2013 appellant filed a timely appeal from a January 3, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The most recent merit decision of record is dated October 26, 2011. There is no merit decision within 180 days of April 12, 2013, the date appellant filed her appeal with the Board. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant contends that the medical evidence of record establishes that she sustained a low back and left hip condition on or before December 30, 1987, with continuous exposure to injurious work factors through mid-July 2007.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated July 1, 2010,<sup>2</sup> the Board set aside OWCP's July 13, 2009 nonmerit decision denying reconsideration. The Board remanded the case for clarification of the legal and factual basis of the determination. The facts of the case as set forth in the Board's prior decision are incorporated by reference.

During the pendency of the first appeal, appellant submitted chart notes from 1989 to 2007 diagnosing left hip arthralgia. She also provided position descriptions and work restrictions. Dr. William L. Burner, an attending Board-certified orthopedic surgeon, noted on May 8, 2007 that appellant's left hip pain with radiation into the left foot remained unchanged over the prior 20 years.

By decision dated December 3, 2010, OWCP denied modification of its prior decision on the grounds that appellant did not submit sufficient medical evidence to establish that her work caused the claimed lumbar or left hip conditions.

In a May 9, 2011 letter, appellant requested reconsideration. She asserted that she had multiple episodes of severe left-sided sciatica since December 30, 1987. Appellant attributed these episodes to a December 30, 1987 occupational injury.

By decision dated October 26, 2011, OWCP denied modification on the grounds of insufficient evidence. It found that the medical evidence did not establish that her duties as a mail handler caused the claimed low back or left hip condition.

In an October 25, 2012 letter, appellant requested reconsideration. She submitted documents from File No. xxxxxx785, noting that OWCP accepted a left hip strain that resolved by July 13, 1988. In that case, OWCP terminated appellant's benefits in an October 17, 1989 decision as the medical evidence demonstrated that the accepted left hip strain resolved without residuals. Appellant asserted that the documents established her entitlement to continuing medical treatment for left-sided sciatica. She asserted that she was disabled for work commencing July 25, 2007 due to her low back and left hip symptoms.

By decision dated January 3, 2013, OWCP denied reconsideration on the grounds that the evidence submitted in support of appellant's October 25, 2012 request was irrelevant to the critical issue of causal relationship. It further found that she did not advance a new legal argument or provide relevant new evidence.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by it; or (3) constitute relevant and pertinent

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<sup>2</sup> Docket No. 09-1991 (issued July 1, 2010).

<sup>3</sup> 5 U.S.C. § 8128(a).

new evidence not previously considered by OWCP.<sup>4</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>6</sup> Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>7</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>8</sup>

### ANALYSIS

OWCP issued a December 3, 2010 decision finding that appellant did not establish that she sustained a claimed lumbar and left hip condition causally related to her work duties. Appellant requested reconsideration on May 9, 2011 asserting that she remained disabled for work due to left-sided sciatica. OWCP denied modification by decision issued October 26, 2011, finding that the medical evidence was insufficient to establish a causal relationship between the claimed low back and left hip condition and factors of her federal employment.

Appellant again requested reconsideration on October 26, 2012, asserting that she remained entitled to medical treatment as OWCP previously accepted a left hip strain under another claim. OWCP denied reconsideration by January 3, 2013 decision, finding that the documents from the other claim were irrelevant to the medical issue of causal relationship.

The Board does not have jurisdiction over the October 26, 2011 decision. The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her October 26, 2012 application 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. Appellant did not advance a new and relevant legal argument. Her argument was that OWCP's acceptance of a left hip strain under a separate claim and the termination of her compensation benefits in October 1989, established her entitlement to ongoing medical treatment for left-sided sciatica under the present claim.

The underlying issue in this case concerns the medical issue of causal relationship. To be relevant to the claim, the evidence submitted on reconsideration must address this issue. The documents from File No. xxxxxx785 do not address causal relationship under the facts in the

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>6</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>7</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>8</sup> *Annette Louise*, 54 ECAB 783 (2003).

present claim. The Board has held that evidence which does not address the particular issue involved is insufficient to warrant reopening a claim for merit review.<sup>9</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that the medical evidence of record establishes that she sustained a low back and left hip condition on or before December 30, 1987, with continuous exposure to injurious work factors through mid-July 2007. Her contentions concern the merit issue of causal relationship, but the Board does not have jurisdiction over the merits of the claim on the present appeal.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *D.K.*, 59 ECAB 158 (2007).