

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 21, 2003 OWCP accepted that appellant, then a 42-year-old mail processor, sustained a lumbosacral sprain, displacement of her L2-3 and L4-5 discs and contusion of her right knee. She did not stop work, but performed limited-duty work for the employing establishment.

Appellant was assessed under the National Reassessment Process (NRP) and stopped work on September 18, 2011 after being advised that no modified work was available within her work restrictions. Effective beginning September 18, 2011, she received disability compensation on the daily and periodic compensation rolls.

On March 15, 2011 appellant was referred for participation in OWCP-sponsored vocational rehabilitation efforts. The employing establishment had been unable to place her in a limited-duty job and the vocational rehabilitation counselor was asked to help find other employment for her.

In an August 2, 2011 decision, OWCP reduced appellant's compensation to zero as appellant was afforded an opportunity to participate in a vocational rehabilitation program to return her to employment based on her medical restrictions, education, experience and other factors, but that she declined to participate.

Appellant requested reconsideration of OWCP's August 2, 2011 decision. In an August 26, 2011 letter, she asserted that the employing establishment was discriminating against her and had delayed her return to modified work, even though other limited-duty workers at the employing establishment had been accommodated.

In a December 5, 2011 decision, OWCP denied modification of its August 2, 2011 decision suspending her compensation for failure to cooperate with vocational rehabilitation efforts.

Appellant again requested reconsideration of the suspension of her compensation. She argued that she had cooperated with the vocational rehabilitation program, but indicated that she wished to return to work with the employing establishment. Appellant stated that she believed that the rehabilitation counselor could have made a better effort to obtain employment for her with the employing establishment.

In an August 16, 2012 decision, OWCP denied modification of its earlier decisions suspending her compensation for failure to cooperate with vocational rehabilitation efforts.

In a letter dated February 16, 2013, appellant requested reconsideration of OWCP's August 16, 2012 decision suspending her compensation for failure to cooperate with vocational rehabilitation efforts. She generally indicated that she cooperated with vocational rehabilitation efforts by asserting that she met with her rehabilitation counselor and took various aptitude tests. However, appellant mostly discussed at length her belief that the employing establishment had not done enough to find her a limited-duty position at the employing establishment. She discussed her assessment under NRP and the removal of her limited-duty work and indicated that

the employing establishment did not give her adequate guidance about how to return to it in a limited-duty position.

Appellant submitted reports from attending physicians indicating that she was able to perform limited-duty work. She also submitted administrative documents, including several relating to her insurance coverage and efforts of the employing establishment to place her in a limited-duty position.

In an April 3, 2013 decision, OWCP denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁶ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

ANALYSIS

OWCP issued a decision on August 16, 2012 reaffirming the suspension of appellant's compensation for failing to cooperate with vocational rehabilitation efforts. Appellant requested reconsideration of this decision on February 28, 2013.

² Under section 8128 of FECA, "[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. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ *John F. Critz*, 44 ECAB 788, 794 (1993).

As noted above, the Board does not have jurisdiction over the August 16, 2012 OWCP decision. The issue presented on appeal 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 application for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument.

In her reconsideration letter dated February 16, 2013, appellant discussed her belief that the employing establishment had not done enough to find her a limited-duty position at the employing establishment. She detailed her assessment under NRP and the removal of her limited-duty work and indicated that the employing establishment did not give her adequate guidance about how to return to limited-duty work for the employing establishment. This argument is not relevant to the underlying issue in this case, which is whether OWCP properly suspended appellant's compensation for failing to cooperate with vocational rehabilitation efforts.⁹ Appellant also generally indicated that she cooperated with vocational rehabilitation efforts by asserting that she met with her rehabilitation counselor and took aptitude tests, but she did not provide any specific details to support this assertion. She did not submit new and relevant evidence, medical or otherwise, that would be relevant to the main issue of the present case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 submit relevant and pertinent 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 further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ Moreover, this argument was similar to arguments, appellant presented in prior reconsideration requests. She discussed similar matters in her appeal papers to the Board, but she did not indicate how these matters related to her vocational rehabilitation efforts.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2103 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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