United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 15-1375**
	)	**Issued: September 3, 2015**
U.S. POSTAL SERVICE, FORT DEARBORN STATION, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2015 appellant, through counsel, filed a timely appeal of an April 16, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between November 7, 2013, the date of OWCP's most recent merit decision, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review pursuant to 5 U.S.C. § 8128(a).

On appeal counsel asserts that the April 16, 2015 decision was contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In an order dated July 25, 2013, the Board found the case not in posture for decision as the record did not contain evidence from the employing establishment, which had been cited in an OWCP September 16, 2011 decision. The Board remanded the case to OWCP to obtain the aforementioned evidence.[2] In an October 23, 2014 decision, the Board found that appellant had not established an occupational disease in the performance of duty and affirmed a November 7, 2013 OWCP decision.[3] The findings of the previous Board decisions and orders are incorporated herein by reference.

On February 18, 2015 appellant, through counsel, requested reconsideration and submitted evidence previously of record including statements by Coworkers Caroline Travis and Nancy Morrow, and a grievance settlement decision dated September 23, 2010. In an undated statement, appellant generally alleged that her claim should be accepted. She also submitted a partial October 11, 2013 nursing triage report completed by Olivia Szymczak, a May 20, 2014 statement from a friend, Aurora Volkmann-Arendt, who advised that appellant had no problems with irritations since she retired, and the first page of a grievance appeal. In a May 16, 2014 report, Dr. Steven Wolf, an attending Board-certified internist, advised that he had treated appellant since January 2010 and that it was likely that atmospheric contaminants at work caused skin rashes on a recurrent and regular basis.

In a nonmerit decision dated April 16, 2015, OWCP denied appellant's reconsideration request. It found the evidence submitted was either duplicative or irrelevant and, therefore, insufficient to warrant merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[4] Section 10.608(a) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).[5] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP

[2] Docket No. 13-658 (issued July 25, 2013). On December 20, 2010 and January 5, 2011 appellant, then a 53-year-old mail processing clerk, filed occupational disease claims alleging that she had been exposed to ongoing chemical irritants at work that caused face, eye, and neck problems. After an initial denial on April 6, 2011, in a June 20, 2011 decision, an OWCP hearing representative remanded the case for OWCP to obtain additional information from the employing establishment regarding testing and investigation of chemical irritants in the workplace. In a September 16, 2011 decision, OWCP indicated that correspondence regarding alleged chemical exposure was found in OWCP file number xxxxxx808 which indicated that an investigation had been conducted. On June 11, 2012 an OWCP hearing representative affirmed the September 16, 2011 decision, and in a merit decision dated January 3, 2013, OWCP denied modification of the prior decisions.

[3] Docket No. 14-1178 (issued October 23, 2014).

[4] 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.608(a).

erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.[6] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[7]

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated April 16, 2015 which denied appellant's application for review. It follows that because there is no OWCP merit decision before the Board it lacks jurisdiction to consider the merits of appellant's claim.[8]

The Board finds that, as appellant did not assert that OWCP erroneously applied or interpreted the law and did not advance a relevant legal argument not previously considered by OWCP, and that she was not entitled to a merit review of the merits of her claim based on the first and second requirements under section 10.606(b)(3).[9]

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted some evidence previously of record that had been reviewed by OWCP and the Board. This included statements by Coworkers Travis and Morrow, and a grievance settlement decision dated September 23, 2010. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[10]

Appellant also submitted a partial October 11, 2013 nursing triage report and a May 20, 2014 statement from a friend, who advised that appellant had no problems with irritations since she retired. A medical report is considered probative evidence if there is a clear indication that the person completing, signing, and dating the report qualifies as a "physician" as defined in section 8102(2) of FECA. That provision provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[11] Lay persons such as Ms. Volkmann-Arendt and nurses like Ms. Szymczak are not physicians. These reports submitted by appellant are, therefore, not competent medical evidence. Likewise, the first page of the grievance appeal is not relevant to the merit issue of whether appellant established an occupational disease causally related to her federal employment. The grievance form is as it is incomplete and merely demonstrates, at most, that an appeal was filed.

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[6] *Id*. at § 10.608(b)(3).

[7] *Id*. at § 10.608(b).

[8] *Id*. at § 501.3(e).

[9] *Id*. at § 10.606(b)(3); *see R.M*., 59 ECAB 690 (2008).

[10] *J.P*., 58 ECAB 289 (2007).

[11] 5 U.S.C. § 8102(2); *see Roy L. Humphrey*, 57 ECAB 238 (2005); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

In his May 16, 2014 report, Dr. Wolf, an attending internist, advised that he had been treating appellant since January 2010 and that it was likely that atmospheric contaminants at work caused skin rashes on a recurrent and regular basis. He previously submitted similar opinions reviewed by both OWCP and the Board.[12] Appellant, therefore, has not submitted relevant and pertinent new evidence not previously considered by OWCP.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied her reconsideration request.[13]

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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[12] *Supra* notes 2 and 3.

[13] *Supra* note 8.