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<b>C.C., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 11-496</b>
	)	<b>Issued: October 5, 2011</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Carol Stream, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On December 21, 2010 appellant filed a timely appeal of a December 16, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying her application for reconsideration without merit review of the claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the December 16, 2010 nonmerit decision. Since more than 180 days elapsed between the last merit decision of September 29, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim.

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

## **FACTUAL HISTORY**

On May 31, 2006 appellant, then a 50-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries on May 30, 2006 when she was struck by an all-purpose container. On June 19, 2006 OWCP accepted the claim for sprain/strain of the neck, left medial collateral ligament (MCL) and left ankle.<sup>2</sup> Appellant also filed a CA-1 for an injury on November 16, 2006 when she had to reach for her chair as it rolled underneath her.<sup>3</sup> On February 14, 2007 OWCP accepted her claim for lumbar sprain, right knee and leg sprain and sprain of other specified site.

On May 5, 2008 appellant filed an April 16, 2008 notice of recurrence of disability (Form CA-2a) commencing March 22, 2008. She stated that she had never recovered from the original injuries and she stopped working on March 26, 2008. By decision dated July 22, 2008, OWCP denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish causal relation.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 18, 2008. By decision dated February 12, 2009, the hearing representative affirmed the denial of a recurrence of disability.

By decision dated March 18, 2009, OWCP denied claims for compensation for intermittent periods from April 29 to November 7, 2008.<sup>4</sup> Appellant requested a review of the written record.

In a decision dated September 29, 2009, an OWCP hearing representative affirmed the March 18, 2009 OWCP decision. The hearing representative noted that a report dated April 14, 2008 from a physician selected as a referee physician, Dr. Martin Saltzman, found appellant could return to her previous work without restriction.<sup>5</sup>

By letter dated September 21, 2010, appellant requested reconsideration of her claim. She stated that she had told the truth regarding her claim, and alleged that an attending orthopedic surgeon, Dr. Jacob Salomon, had made a false statement regarding her history.<sup>6</sup> Appellant alleged that postal inspectors had interfered with her claim and withheld the September 29, 2009 decision from her mail.

The record contains medical evidence that was submitted after September 29, 2009. In a report dated April 30, 2010, Dr. Bruce Montella, an orthopedic surgeon, stated that appellant had

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<sup>2</sup> OWCP also stated in a July 22, 2008 decision that the claim was accepted for knee sprain.

<sup>3</sup> This claim was developed under a separate OWCP claim number. The two claims were subsequently combined for administrative purposes.

<sup>4</sup> Appellant had filed claims for compensation (Form CA-7) for these periods.

<sup>5</sup> Dr. Saltzman noted that he had viewed a videotape of appellant from 2006 performing certain activities.

<sup>6</sup> In a report dated October 28, 2006, Dr. Salomon stated that appellant had a recent injury where a sports utility vehicle had struck appellant.

been treated since January 17, 2008. He stated that appellant had ongoing difficulties with her knees, neck shoulder and back, as a result of work-related injuries. Dr. Montella stated that appellant was permanently and totally disabled. In a report dated July 14, 2010, Dr. Salomon stated that appellant had seven different claims for injury since 1991.<sup>7</sup> He indicated that appellant now had degenerative changes.

By decision dated December 16, 2010, OWCP determined that the application for reconsideration was insufficient to warrant review of the merits of the claim for compensation.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>8</sup> OWCP regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: “(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP.”<sup>9</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>10</sup>

### **ANALYSIS**

Appellant submitted an application for reconsideration of the September 29, 2009 merit decision by OWCP. The only issue is whether her application and the evidence submitted meets one of the standards that would require OWCP to reopen the case for further merit review. The Board notes that the September 29, 2009 OWCP decision was restricted to specific claims for disability compensation during intermittent periods from April 29 to November 7, 2008.

Appellant has not shown OWCP erroneously applied or interpreted a specific point of law. She did not discuss a specific point of law, or present evidence or argument showing that OWCP erroneously applied or interpreted such point of law. With respect to the second standard, advancing a relevant legal argument not previously considered by OWCP, appellant did not meet this standard. She did not discuss a new and relevant legal argument regarding her claim. Appellant referred generally to postal inspectors interfering with her claim, withholding her mail and listening to her conversations. She did not advance any new and relevant legal argument with respect to her claim for compensation from April 29 to November 7, 2008.

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<sup>7</sup> Dr. Salomon indicated that six of the claims were combined under the current file, but the evidence indicated that only the May 30 and November 16, 2006 claims are included in the current master file.

<sup>8</sup> 5 U.S.C. § 8128(a) (providing that “[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”).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

As to the third standard, the submission of relevant and pertinent evidence not previously considered by OWCP, the Board notes that the record contains numerous medical reports and statements from appellant received between September 29, 2009 and December 16, 2010. The issue presented is a medical issue regarding any employment-related disability in 2008. Some of the medical evidence had previously been submitted prior to September 29, 2009, either in the May 31 or November 16, 2006 claims.<sup>11</sup> With respect to new evidence, none of the reports discuss disability during the relevant periods in question from April 29 to November 7, 2008. The April 30, 2010 report from Dr. Montella, for example, generally opined that appellant was disabled as of that date. While this may be relevant to a claim for compensation as of the date of the report, but it does not discuss disability in 2008. There were no new medical reports submitted that are relevant to the specific medical issue adjudicated in the September 29, 2009 decision. Accordingly, the Board finds appellant did not meet the third standard.

Since 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 by OWCP, she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). In accord with 20 C.F.R. § 10.608, OWCP properly declined to review the merits of the claim.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

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<sup>11</sup> The claims were combined prior to the September 29, 2009 decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 16, 2010 is affirmed.

Issued: October 5, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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