

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

B.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chamblee, GA, Employer**

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**Docket No. 11-1695
Issued: February 7, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 15, 2011 appellant filed a timely appeal from a February 11, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As the last merit decision was issued on July 15, 2010, more than 180 days from the filing of the appeal, the Board lacks jurisdiction over the merits of this case.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the February 11, 2011 nonmerit decision.

ISSUE

The issue is whether OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

¹ See 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 2000 appellant, then a 46-year-old distribution window clerk, filed a traumatic injury claim alleging that on that date she injured her left leg, right arm and head when she tripped and fell in the performance of duty. OWCP accepted the claim for right lateral epicondylitis, lumbar sprain and right shoulder impingement. Appellant worked limited-duty employment following her injury.

In decisions dated December 8, 2006 and February 12, 2007, OWCP found that appellant had not established a recurrence of disability beginning June 15, 2006 due to her September 21, 2000 work injury.³ By decision dated November 23, 2009, OWCP terminated her compensation and authorization for medical treatment effective December 20, 2009.⁴ It found that the opinion of Dr. Alexander Doman, a Board-certified orthopedic surgeon, who provided a second opinion examination, constituted the weight of the evidence and established that she had no further disability or need for medical treatment due to her September 21, 2000 employment injury.⁵

On December 3, 2009 appellant requested reconsideration and related that she would be submitting supporting medical evidence. In a decision dated December 18, 2009, OWCP denied her request for reconsideration after finding that she had not submitted supporting evidence or argument sufficient to warrant reopening her case for further review of the merits of her case under section 8128.⁶

On April 30, 2010 appellant requested reconsideration. In a decision dated July 15, 2010, OWCP denied modification of its November 23, 2009 termination decision.

On January 19, 2011 appellant requested reconsideration. She argued that Dr. Dorman found that her impingement syndrome, lumbar strain and knee injury had resolved based on x-ray studies even though magnetic resonance imaging (MRI) studies of the left knee showed a medial meniscus tear and MRI scan studies of the lumbar spine. Appellant described the findings on lumbar MRI scan studies dated June 10, 2002, January 26, 2006, March 30, 2007 and October 21, 2010.

³ In a decision dated February 3, 2006, OWCP granted appellant a schedule award for a one percent permanent impairment of the right upper extremity. By decision dated April 6, 2007, it denied modification of the February 3, 2006 schedule award determination. In a nonmerit decision dated May 8, 2007, OWCP denied appellant's request for reconsideration of the schedule award.

⁴ OWCP noted in its proposed notice termination of compensation that appellant received medical benefits under this file number. It indicated in its November 23, 2009 decision that it was terminating her compensation and entitlement to medical treatment. As OWCP was not paying appellant compensation under this file number, however, it improperly characterized the issue as termination of wage-loss compensation. The issue was whether appellant has residuals of her employment injury entitling her to further medical treatment.

⁵ In a report dated June 16, 2009, Dr. Doman diagnosed fibromyalgia unrelated to appellant's accepted work injury. He found that she had no residuals of her accepted work injury but had mild left knee osteoarthritis not due to her employment.

⁶ By decision dated December 30, 2009, OWCP denied appellant's claim for an increased schedule award after finding that she had not submitted any supportive medical evidence.

On January 28, 2011 appellant submitted a copy of her request for reconsideration in another file number and copies of psychiatric reports and evaluations from 2005 to 2009 associated with the other file number. By letter dated January 30, 2011, appellant indicated that she had submitted MRI scan studies with her request for reconsideration and was awaiting approval for medical benefits for her lumbar condition.

By decision dated February 11, 2011, OWCP denied appellant's request for reconsideration after finding that the evidence submitted was insufficient to warrant reopening her case for further merit review. It further informed her that her left knee condition was associated with another file number.

On appeal appellant argues that she continued to require medical treatment for her lumbar spine. She noted that Dr. Doman diagnosed fibromyalgia of the left leg but OWCP did not accept the condition and did not approve treatment with a psychologist.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP's 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁸ 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.⁹ 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.¹⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹² While the 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.¹³

⁷ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹² *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹³ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

ANALYSIS

OWCP terminated appellant's entitlement to medical benefits effective December 20, 2009 after finding that the weight of the medical evidence established that she had no further residuals of her September 21, 2000 employment injury, accepted for right lateral epicondylitis, lumbar sprain and right shoulder impingement. On January 19, 2011 appellant requested reconsideration of the termination of her medical benefits.

As noted above, the Board does not have jurisdiction over the merits of the case. 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 case. In her January 2011 request 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. She maintained that Dr. Doman disregarded the findings on MRI scan study in determining that she had no residuals of her impingement syndrome, lumbar strain and knee injury.¹⁴ OWCP, however, found that Dr. Doman's opinion represented the weight of the evidence, and appellant has not submitted any medical evidence or raised a legal argument sufficient to warrant reopening her case for further merit review. The issue of whether she requires further medical treatment due to her September 21, 2000 employment injury is a medical issue which must be addressed by relevant medical evidence.¹⁵

Appellant further summarized the findings on MRI scan study of the knee and lumbar spine and argued that the studies showed that her lumbar spine and knee conditions had not resolved. As discussed, however, the underlying issue is whether the medical evidence establishes that appellant has a further need for medical treatment due to residuals of her September 21, 2000 employment injury. Her lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.¹⁶ A claimant may also be entitled to a merit review by submitting pertinent new and relevant evidence not previously considered but appellant did not submit any pertinent new and relevant medical evidence in this case.¹⁷ She submitted reports from psychologist and psychiatrists in connection with another file number; however, these reports are not relevant to the issue of whether she had any need for further medical treatment for her right lateral epicondylitis, lumbar strain or right shoulder impingement. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹⁸

¹⁴ As indicated by OWCP, appellant's knee condition is associated with another file number.

¹⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁶ *Gloria J. McPherson*, 51 ECAB 441 (2000); *L.G.*, Docket No. 09-1517, (issued March 3, 2010).

¹⁷ Appellant indicated that she was submitting MRI scan studies; however, there were no MRI scan studies accompanying her letter. The record contains MRI scan studies previously submitted and considered by OWCP.

¹⁸ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

On appeal appellant argues that she continued to require medical treatment for her lumbar spine; however, as noted, her lay opinion does not constitute relevant evidence.¹⁹ She asserted that OWCP should have accepted fibromyalgia based on Dr. Doman's report and also should have approved treatment by a psychologist. Dr. Doman, however, found that the fibromyalgia was unrelated to employment. Regarding treatment with a psychologist, as previously discussed the relevant issue in this case is whether she has any further need for medical treatment due to her September 21, 2000 work injury.²⁰

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 new evidence not previously considered. OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

¹⁹ See *supra* note 16.

²⁰ It is appellant's burden to establish conditions not accepted by OWCP as employment related through the submission of rationalized medical evidence. See *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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