



## **FACTUAL HISTORY**

This case has previously been before the Board.

On September 30, 2009 appellant, then a 46-year-old mail carrier, filed a Form CA-1 alleging that she injured her left knee in the performance of duty on September 28, 2009. By decision dated November 17, 2009, OWCP denied her claim, finding the evidence insufficient to establish that an employment incident occurred on September 28, 2009, as alleged. Appellant subsequently provided a December 10, 2009 report from Dr. Brian J. Ceccarelli, an osteopath specializing in orthopedic surgery. Dr. Ceccarelli opined that she aggravated a preexisting left knee condition while carrying mail on or around September 28, 2009. Appellant also requested a telephonic hearing, which was held on March 16, 2010. On June 1, 2010 OWCP's hearing representative modified the November 17, 2009 decision to find that she delivered mail on September 28, 2009, but denied the claim on the grounds that the medical evidence was insufficient to demonstrate that the accepted work event caused or aggravated a left knee condition.

On May 13, 2011 the Board affirmed the denial of appellant's traumatic injury claim on the basis that the medical evidence did not establish that a left knee condition resulted from a September 28, 2009 employment incident.<sup>2</sup> Facts germane to the present appeal have been set forth. The findings contained in the Board's prior decision are incorporated by reference.

Thereafter, appellant submitted a March 10, 2010 report from Dr. Ceccarelli, who noted that appellant related injuring her left knee at work on September 28, 2009. Dr. Ceccarelli noted findings from an October 2, 2009 magnetic resonance imaging scan and diagnosed left knee arthritis. He opined that appellant's arthritis was preexisting but that the September 2009 work injury aggravated the preexisting condition.

On November 17, 2011 appellant's counsel requested reconsideration before OWCP and submitted a copy of Dr. Ceccarelli's December 10, 2009 report.

By decision dated November 28, 2011, OWCP denied the request, finding that appellant did not present pertinent new evidence warranting further merit review.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.<sup>4</sup> Where the request for

---

<sup>2</sup> Docket No. 10-1975 (issued May 13, 2011).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### ANALYSIS

On May 13, 2011 the Board found that appellant did not meet her burden of proof because the medical evidence did not sufficiently establish that the accepted September 28, 2009 employment incident caused or aggravated a preexisting left knee condition. On November 17, 2011 appellant's counsel timely requested reconsideration and submitted medical evidence. OWCP denied the request on November 28, 2011, finding that appellant did not present pertinent new evidence warranting further merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. Appellant attached a copy of Dr. Ceccarelli's December 10, 2009 report to her application for reconsideration, which was previously received and considered by OWCP. The submission of evidence that repeats or duplicates evidence already included in the case record does not constitute a basis for reopening a case.<sup>6</sup> Dr. Ceccarelli's March 10, 2010 report, while new, addressed causal relationship in the same manner as the physician's previously considered December 10, 2009 report. Thus, the March 10, 2010 report is repetitious of Dr. Ceccarelli's prior report.

Appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

Counsel argues on appeal that the November 28, 2011 decision was contrary to fact and law. As noted, appellant did not offer a valid legal contention or pertinent evidence not previously considered by OWCP. Therefore, OWCP properly denied the request for reconsideration.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

---

<sup>5</sup> *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

<sup>6</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 2012  
Washington, DC

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

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

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