

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

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**S.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

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**Docket No. 13-1012  
Issued: August 22, 2013**

*Appearances:*

*John E. Dunlap, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 21, 2013 appellant, through counsel, filed a timely appeal from a January 31, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for further review of the merits of her claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the nonmerit decision by OWCP. The last merit decision of record was OWCP's August 15, 2012 decision. Because more than 180 days has elapsed between the last merit decision and the filing of this appeal on March 21, 2013, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

**ISSUE**

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

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

<sup>2</sup> For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

## **FACTUAL HISTORY**

On June 11, 2010 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2010 she sustained lumbar disc displacement when she was unloading a container (tray) to place on a machine ledge. She notified her supervisor of her injury on June 11, 2010.

By letter dated July 9, 2010, OWCP requested additional factual and medical evidence from appellant and asked that she respond to the provided questions within 30 days. Appellant did not respond and no evidence was submitted.

By decision dated August 11, 2010, OWCP denied appellant's claim finding that the evidence of record failed to establish a diagnosed medical condition which was related to the accepted June 11, 2010 employment incident.

On December 13, 2010 appellant requested reconsideration. In support of her claim, appellant submitted a narrative statement and medical documents from various health care providers.

By decision dated March 3, 2011, OWCP affirmed the August 11, 2010 decision, as modified, finding that the evidence failed to establish that the incident occurred as alleged. It also found that the medical evidence failed to establish a firm diagnosis which was related to the alleged employment incident.

By letter dated May 20, 2011, appellant, through counsel, requested reconsideration of OWCP's decision.

In an April 25, 2011 narrative statement, appellant's coworker, Joanne Jefferson, reported that she was standing near appellant when she stated that she felt a sharp pain while lifting a heavy tray of mail on April 16, 2010.

By decision dated November 9, 2011, OWCP affirmed the March 3, 2011 decision, as modified, finding that the evidence established that the June 11, 2010 employment incident occurred as alleged. It denied appellant's claim, however, for failing to establish a firm medical diagnosis which was causally related to the accepted June 11, 2010 employment incident.

On May 14, 2012 appellant, through counsel, requested reconsideration of OWCP's decision. In support of her claim, she submitted various medical records documenting her treatment.

By decision dated July 30, 2012, OWCP affirmed the November 9, 2011 decision, as modified. It found that appellant had established a firm medical diagnosis of multiple lumbar spine diagnoses and that the June 11, 2010 employment occurred as alleged. OWCP denied her claim, however, finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted June 11, 2010 employment incident.

By letter dated January 3, 2013, appellant, through counsel, requested reconsideration of OWCP's decision. Counsel stated that he was enclosing records from the Orthopedic Memphis Group for review. The record reveals that no other evidence was received.

By decision dated January 31, 2013, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.<sup>3</sup>

### **LEGAL PRECEDENT**

To reopen a case for merit review under section 8128(a), 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 new evidence not previously considered by OWCP.<sup>4</sup> Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.<sup>6</sup>

In the January 3, 2013 reconsideration request, counsel for appellant stated that he was enclosing records from the Orthopedic Memphis Group for review. As appellant's reconsideration request was received, the issue is not whether her reconsideration request was delivered, but rather whether the request was accompanied by additional evidence. Appellant has not otherwise provided argument or evidence of sufficient probative value to show that reports from the Orthopedic Memphis Group were received by OWCP prior to the January 31, 2013 decision. The record before the Board contains no such reports.

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 November 16, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and

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<sup>3</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its January 31, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

<sup>4</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>5</sup> *K.H.*, 59 ECAB 495 (2008).

<sup>6</sup> *Glen E. Shiner*, 53 ECAB 165 (2001). Abuse of discretion is generally shown through proof of manifest error clearly unreasonable exercise of judgment or actions taken that are contrary to both logic and probable deduction from established facts.

relevant legal argument. Appellant failed to submit any medical evidence addressing causal relationship and there is no indication that a medical report concerning causal connection was received by OWCP. The issue in this case was whether appellant's lumbar spine condition was causally related to the June 11, 2010 employment incident. That is a medical issue which must be addressed by relevant medical evidence.<sup>7</sup> In this case, appellant did not submit any new and relevant medical evidence.<sup>8</sup>

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.<sup>9</sup>

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. She did not 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 in the January 31, 2013 decision.<sup>10</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration without a merit review.

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<sup>7</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>8</sup> On appeal, appellant argues that she submitted sufficient medical evidence establishing causation. The Board notes that reports submitted prior to the July 30, 2012 OWCP decision were previously evaluated and found insufficient to establish causal relationship.

<sup>9</sup> 20 C.F.R. § 501.2(c)(1).

<sup>10</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated January 31, 2013 is affirmed.

Issued: August 22, 2013  
Washington, DC

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

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

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