

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

P.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bethpage, NY, Employer**

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**Docket No. 13-802
Issued: July 19, 2013**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 15, 2013 appellant, through her attorney, filed a timely appeal from the November 20, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from the most recent merit decision of December 1, 2011 to the filing of this appeal, the Board does not have jurisdiction over the merits of the case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.²

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. In a December 1, 2011 decision, the Board found that appellant did not establish that she sustained a traumatic injury to her left knee

¹ 5 U.S.C. § 8101 *et seq.*

² For decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal to the Board. *See* 20 C.F.R. § 501.3(e).

on December 21, 2009, as alleged. The Board noted inconsistencies in the factual and medical evidence which cast serious doubt as to whether the December 21, 2009 incident was sustained at the time, place and in the manner alleged. The facts of the case, as set forth in the Board's prior decision are incorporated herein by reference.³

In a January 27, 2012 letter, appellant, through counsel, requested reconsideration before OWCP. She submitted a January 20, 2012 report from Dr. Thomas P. Obade, a Board-certified orthopedic surgeon, who noted having read the Board's December 1, 2011 decision and reiterated that he first treated appellant on December 30, 2009 at which time her predominant problem was with her left knee. Appellant related that she was on her hands and knees under a shelf on December 21, 2009 "when she twisted and also hit her knee, at the same time, causing immediate pain." Dr. Obade stated that it was now also apparent that she had pain in her back with radiation to the left lower extremity. He stated that appellant's description of her mechanism of injury was certainly consistent with the findings of left knee pathology. While her back symptoms subsided, appellant was left with significant left knee pathology for which she had not received any prior treatment. Dr. Obade stated his opinion that the Board's finding of an inconsistent history was not reasonable given the short time between appellant's injury and diagnosis. Counsel contended that Dr. Obade's report supported appellant's claim of injury in light of the fact that her knee complaints were recorded within 24 hours and that it was not relevant that the December 21, 2009 incident was not witnessed or corroborated.

In a November 20, 2012 decision, OWCP denied appellant's request for reconsideration. It found that she did not raise a substantive legal question or include new and relevant evidence sufficient to warrant further merit review. While the January 20, 2012 report of Dr. Obade was new, it was not relevant as the physician could not resolve the various inconsistencies in appellant's various accounts of her injury.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered; or by constituting relevant and pertinent evidence not previously considered.⁴ Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case for merit review.⁵

ANALYSIS

In support of her request for reconsideration, appellant submitted the January 20, 2012 report of Dr. Obade, an attending orthopedic surgeon, who reviewed the Board's December 1, 2011 decision and recounted appellant's description of the mechanism of injury on December 21, 2009. Dr. Obade stated his opinion that the decision of the Board was not

³ Docket No. 11-1040 (issued December 1, 2011). On December 28, 2009 appellant claimed injury to her left knee on December 21, 2009.

⁴ 20 C.F.R. § 10.606(b). See *Charles A. Jackson*, 53 ECAB 671 (2002).

⁵ See *Howard A. Williams*, 45 ECAB 853 (1994).

reasonable given the short period between the incident at work and the diagnosis of a left knee injury within 48 hours.

The Board finds that the January 20, 2012 report of Dr. Obade is essentially duplicative of his prior reports of record. In his initial December 30, 2009 treatment record, Dr. Obade noted the same history that appellant was under the shelf of a cabinet when she twisted her knee and hit it at the same time. The fact that he stated his disagreement with the Board's December 1, 2011 decision is not relevant to resolving the factual inconsistencies as highlighted. Appellant has not shown that OWCP erroneously applied or misinterpreted a point of law, has not advanced a relevant legal argument not previously considered, or constituted relevant evidence in support of her request for reconsideration. The Board finds that OWCP did not abuse its discretion by denying further merit review of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 19, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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