

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

---

**S.G., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Warwick, RI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 13-1993  
Issued: June 13, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On August 28, 2013 appellant filed a timely appeal from the April 24, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for further merit review. As the last merit decision was issued on October 12, 2012, more than 180 days from the filing of this appeal, and pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of the claim.

**ISSUE**

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

---

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

## **FACTUAL HISTORY**

On January 20, 2012 appellant, then a 45-year-old transportation security officer, filed a traumatic injury claim alleging that she injured her left knee that day when she walked out of the bag room door onto packed snow and fell while in the performance of duty. The employing establishment confirmed that she fell and noted that employees were advised not to walk outside when conditions were snowy or icy.

A January 30, 2012 magnetic resonance imaging (MRI) scan, read by Dr. Krishanu B. Gupta, a Board-certified diagnostic radiologist, revealed a tear of the insertion of the posterior cruciate ligament, medial cruciate ligament and severe medial compartment and moderate patellofemoral and lateral compartment osteoarthritis, massive joint volume and effusion with synovitis and a small cystic lesion seen within the visualized portions of the distal femur.

In a February 7, 2012 disability certificate, Dr. Norman Kornwitz, a Board-certified orthopedic surgeon, advised that appellant was unable to work. In a February 7, 2012 treatment note, he noted that she had an MRI scan which demonstrated significant medial compartment wear, a tear at the posterior cruciate ligament with a large effusion. Dr. Kornwitz examined appellant and recommended knee replacement surgery. OWCP also received notes from physical therapy and nurses.

By decision dated April 18, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish that her left knee condition was related to the January 20, 2012 incident.

On July 8, 2012 appellant requested reconsideration. She enclosed additional medical evidence and argued that her condition was work related. Appellant noted that she was examined nine days prior to her injury and did not have a "posterior cruciate ligament" tear in her left knee.

In a May 30, 2012 report, Dr. Kornwitz opined that, based upon an MRI scan and appellant's examination, "it is my opinion that her posterior cruciate ligament tear was causally related to her slip and fall on January 20, 2012 while working security." OWCP received a copy of the February 7, 2012 report from Dr. Kornwitz and physical therapy notes.

In a July 6, 2012 report, Dr. Wolfgang Fitz, an orthopedic surgeon, noted that he saw appellant on January 11, 2012. His evaluation of her left knee revealed an effusion, Baker's cyst and limited range of motion. Dr. Fitz noted that appellant lacked 10 degrees of extension and was limited to 70 degrees of flexion. He advised that her posterior cruciate ligament was intact. Dr. Fitz explained that a total knee replacement was recommended based upon his review of the radiographic findings and physical examination.

By decision dated October 12, 2012, OWCP denied modification of the April 18, 2012 decision.

On April 12, 2013 appellant requested reconsideration and submitted additional evidence. She described what happened on the date of the incident. Appellant related that she slipped on ice and packed snow and fell on her back and was unable to move due to excruciating pain. She

noted that her left leg was injured in the incident. Appellant was able to return to full duty on January 1, 2013 without restrictions. She submitted evidence including various statements and incident reports pertaining to the January 20, 2012 incident. They included: an April 7, 2006 letter from the employing establishment, which indicated that appellant was offered an appointment as a transportation security officer; a January 20, 2012 incident report; several statements from colleagues and parking activity reports. Statements included: an October 26, 2012 statement from Raymond Houtman; a November 2, 2012 statement from Gregory Burr; a November 21, 2012 statement from Stephen Stone; a December 27, 2012 statement from John P. Pierson; a January 4, 2013 statement from Transportation Security Officer John Poland; and an April 14, 2013 statement from Carolyn “Scarlet” Scire. These statements either noted observing appellant immediately after she fell or indicated that she did not have health issues prior to the fall.

In a December 21, 2012 report, Dr. Fitz noted that appellant was under his care and could return to work on January 1, 2013. OWCP received copies of the January 30, 2012 MRI scan from Dr. Gupta and the February 7 and May 30, 2012 reports from Dr. Kornwitz.

By decision dated April 24, 2013, OWCP denied appellant’s request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>2</sup> OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

---

<sup>2</sup> *Id.* at § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> *Id.* at § 10.608(b).

## ANALYSIS

Appellant disagreed with the denial of her claim and requested reconsideration on April 18, 2013. The underlying issue on reconsideration is medical in nature, whether the January 20, 2012 work incident contributed to an injury. In her April 12, 2013 statement, appellant described the January 20, 2012 incident and asserted that she sustained a work-related injury. This statement does not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP as the underlying issue is medical in nature. Also with her reconsideration request, appellant submitted various witness statements and incident reports pertaining to the January 20, 2012 incident. This is not relevant and pertinent new evidence, as the issue on appeal is medical in nature. The factual occurrence of the January 20, 2012 incident is not in dispute as that incident has been accepted. The claim was denied due to insufficient medical evidence on causal relationship; medical evidence addressing how the work incident caused or aggravated a diagnosed medical condition.

The new medical evidence submitted by appellant included a December 21, 2012 report from Dr. Fitz, who noted that she was under his care and could return to work on January 1, 2013. This report, while new, is not relevant as Dr. Fitz did not address the causal relationship between the accepted work incident and a diagnosed medical condition. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup> OWCP received copies of the January 30, 2012 MRI scan from Dr. Gupta and the February 7 and May 30, 2012 reports from Dr. Kornwitz. However, it previously considered these reports in the prior decision dated October 12, 2012. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>6</sup>

Consequently, the evidence submitted by appellant on reconsideration does not satisfy any of the regulatory criteria for reopening a claim for a merit review. Therefore, OWCP properly denied appellant's request for reconsideration.<sup>7</sup>

On appeal, appellant argued that the evidence supported that the incident occurred as she alleged. The Board notes that the factual occurrence of the incident is not in dispute. Appellant also argued that she did not have any medical conditions prior to her fall and that Dr. Kornwitz provided an opinion that her condition was causally related. As noted, OWCP previously considered Dr. Kornwitz's opinion and found that it was insufficient. Furthermore, the Board, in the present appeal, does not have jurisdiction to consider the

---

<sup>5</sup> *Robert P. Mitchell*, 52 ECAB116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

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

<sup>7</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *Candace A. Karkoff*, 56 ECAB 622 (2005) (when an application for reconsideration does not meet at least one of the three requirements enumerated under then section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

merits of the claim. As discussed, appellant did not submit sufficient evidence to require OWCP to reopen the claim for a merit review.

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2014  
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