

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

T.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hesperia, CA, Employer**

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**Docket No. 16-0462
Issued: May 6, 2016**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 12, 2016 appellant, through counsel, filed a timely appeal of a December 21, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed since the last merit decision of OWCP, dated February 12, 2014, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly refused further merit review of appellant's claim under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated October 23, 2014, the Board affirmed OWCP's February 12, 2014 decision, which found that appellant had failed to submit sufficient medical evidence to establish an injury causally related to factors of her federal employment.² The facts of the case, as set forth in the prior decision, are incorporated herein by reference.

On September 25, 2015 appellant's counsel requested reconsideration. He indicated that he was submitting new medical evidence, which had not previously been considered.

In an April 15, 2015 report, a healthcare provider with an illegible signature indicated that the primary condition that prevented appellant from working was knee pain. The individual noted objective findings including arthritis. The individual recommended no walking more than 10 minutes per hour and a knee replacement. Additionally, the period April to October 13, 2015 was identified as a period that she was unable to work.

By decision dated December 21, 2015, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) 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 which:

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

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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

² Docket No. 14-929 (issued October 23, 2014). On November 14, 2012 appellant, a city carrier, filed an occupational disease claim (Form CA-2) alleging a right knee and foot condition as a result of her employment. On January 23, 2013 OWCP denied the claim. In a June 20, 2013 decision, an OWCP hearing representative affirmed the denial finding that the medical evidence was insufficient to establish an injury causally related to employment duties. Appellant requested reconsideration. On February 12, 2014 OWCP denied modification of the June 20, 2013 decision.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

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.⁵

ANALYSIS

Appellant disagreed with the denial of her claim for an occupational disease and her counsel requested reconsideration on September 25, 2015. The underlying issue on reconsideration is whether appellant met her burden of proof to establish an injury causally related to factors of her federal employment. However, appellant has not provided any relevant or pertinent new evidence regarding the issue.

On reconsideration, counsel advised that he was submitting new medical evidence. However, it is unclear whether the April 15, 2015 report with an illegible signature is the report of a physician. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.⁶ The Board notes that the relevant issue in this claim, whether appellant sustained an occupational disease causally related to her federal employment factors, is a medical question and must be resolved by the submission of relevant medical evidence.⁷ As appellant did not submit any probative medical evidence which addressed the issue of causal relationship, the evidence did not constitute a basis for reopening the case.⁸

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Appellant also has not shown that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied his request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused further merit review of appellant's claim under 5 U.S.C. § 8128(a).

⁵ *Id.* at § 10.608(b).

⁶ *R.M.*, 59 ECAB 690, 693 (2008). *See also C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA); 5 U.S.C. § 8101(2) (defines the term physician).

⁷ *See Paul Foster*, 56 ECAB 208 (2004) (causal relationship is a medical issue).

⁸ *See Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB116 (2000).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board