

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

K.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port Gibson, MS, Employer**

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**Docket No. 16-0611
Issued: May 13, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 1, 2016 appellant filed a timely appeal from an October 8, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision dated May 12, 2015 and the filing of the appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted new evidence. The Board, however, is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal, appellant contends that she submitted medical evidence signed by a nurse practitioner and a medical doctor.

FACTUAL HISTORY

On March 24, 2015 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she experienced pain on her right side, neck, back, and leg when she attempted to avoid hitting a deer that had run in front of her car on that date while in the performance of duty. She stopped work on March 30, 2015.

An authorization for examination and/or treatment (Form CA-16) was signed and issued by the employing establishment on March 24, 2015.

In a March 24, 2015 medical report, Marvell Spears, a family nurse practitioner, noted that appellant was involved in a motor vehicle accident. He also noted her complaint about neck and right side pain. Mr. Spears provided examination findings and diagnosed unspecified thoracic or lumbosacral neuritis or radiculitis, lumbago, and muscle spasm.

In a March 30, 2015 certificate of return to work, LaDella Thomas, a receptionist at Claiborne City Family Health Center, reported that appellant was unable to work through April 11, 2015. She could return to work on April 13, 2015.

By letter dated April 6, 2015, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence if appellant had been treated at its medical facility.

In a March 30, 2015 report, Mr. Spears reiterated appellant's diagnoses of unspecified thoracic or lumbosacral neuritis or radiculitis, lumbago, and muscle spasm. In an April 10, 2015 certificate of return to work, he reported that appellant would be able to resume work on April 13, 2015.

In an April 10, 2015 duty status report (Form CA-17), Dr. Colette Scott, an attending family practitioner, provided clinical findings and advised that appellant could return to full-time work on April 13, 2015. The Form CA-17 was cosigned by Mr. Spears.

By decision dated May 12, 2015, OWCP accepted that the March 24, 2015 incident occurred as alleged. However, it denied appellant's claim as the medical evidence did not contain a medical diagnosis in connection with the accepted employment incident. Appellant was advised that a nurse or nurse practitioner was not considered a qualified physician under FECA.

In an appeal request form and letter dated August 6, 2015 and received by OWCP on August 10, 2015, appellant requested reconsideration. She contended that the evidence submitted was signed by a nurse practitioner and a medical doctor, Dr. Scott.

Appellant resubmitted Mr. Spears' March 24 and 30, 2015 reports and Dr. Scott's April 10, 2015 Form CA-17 report. She submitted Mr. Spears' April 10, 2015 report in which he

again diagnosed unspecified thoracic or lumbosacral neuritis or radiculitis, lumbago, and muscle spasm.

In an October 8, 2015 decision, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was not from a qualified physician as a nurse or a nurse practitioner are not considered physicians under FECA.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of the FECA,³ OWCP's regulation provide that 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 and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁵ Section 10.608(b) of the implementing regulations states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

Appellant disagreed with OWCP's denial of her traumatic injury claim. She requested reconsideration and asserted that the evidence submitted in support of her claim was signed by a qualified physician. The underlying issue on reconsideration is medical in nature, whether the accepted March 24, 2015 work incident caused or contributed to an injury.

The Board finds that OWCP properly denied appellant's August 6, 2015 request for reconsideration. In her request, appellant asserted that she submitted evidence signed by a nurse practitioner and a medical doctor, Dr. Scott. While the April 10, 2015 Form CA-17 report was cosigned by Mr. Spears, a nurse practitioner, and Dr. Scott, a family practitioner, this report is duplicative of evidence previously considered by OWCP in its May 12, 2015 decision. Moreover, although signed by Dr. Scott, the report does not address medical causation which is the threshold issue in the case. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review.⁷ Evidence or argument which does not address the particular issue under consideration does not constitute a basis for reopening a case.⁸

³ *Supra* note 1. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁸ *See K.T.*, Docket No. 15-1916 (issued February 1, 2016).

The Board finds that the remaining evidence submitted in support of appellant's request for reconsideration is insufficient to justify a merit review of her claim. The March 24 and 30 and April 10, 2015 reports from Mr. Spears have no probative medical value as they were signed only by a nurse practitioner and not countersigned by a physician. A nurse practitioner is not a physician as defined under FECA.⁹ As the underlying issue is medical in nature,¹⁰ reports from a layperson, such as a nurse practitioner, do not constitute medical evidence and their findings and opinions do not suffice for purposes of establishing FECA benefits.¹¹ Therefore, these reports are of no relevance to the issue of causal relationship and do not comprise a basis for reopening a case for a merit review.¹²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends that she submitted medical evidence signed by a nurse practitioner and a medical doctor. As explained, the evidence submitted by appellant is insufficient to reopen her claim for merit review.

The Board notes that the employing establishment executed a Form CA-16 on March 24, 2015 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹³ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should rule on the matter.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2).

¹⁰ *Carol A. Lyles*, 57 ECAB 265 (2005) (causal relationship is a medical issue which must be resolved by competent medical opinion).

¹¹ *Edward Matthew Diekemper*, 31 ECA 224, 225 (1979).

¹² *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹³ *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board