



result of performing her work duties. OWCP accepted her claim for left knee osteoarthritis. It subsequently accepted the claim to include right knee osteoarthritis. OWCP authorized surgery which was performed on September 9, 2005. Appellant stopped work intermittently and did not return to work following her surgery.

Appellant came under the treatment of Dr. Daniel C. Snyder, a Board-certified orthopedic surgeon. On September 9, 2005 Dr. Snyder performed a right knee arthroscopy with chondroplasty of the medial femoral condyle and patellofemoral joint and a synovectomy. In a report dated October 26, 2005, he noted that appellant was totally disabled from work secondary to arthrosis. In reports dated February 21, 2006 to March 1, 2007, Dr. Snyder noted that she continued to have severe pain from post-traumatic arthrosis of both knees and recommended a bilateral total knee replacement. A July 10, 2005 magnetic resonance imaging (MRI) scan of the right knee revealed no evidence of meniscal or ligament tear, early degenerative changes medial femoral-tibial compartment with mild chondromalacia noted and joint effusion.

OWCP referred appellant to Dr. Stanley Hom, a Board-certified orthopedic surgeon, regarding her ability to work. On September 11, 2008 Dr. Hom opined that her current symptoms were due to the progression of her preexisting degenerative arthritis. He opined that appellant could work in a modified capacity with limitations. Dr. Hom advised that she could work part time, four to six hours a day and progress as tolerated. On December 16, 2008 Dr. Snyder concurred with Dr. Hom's opinion.

On June 4, 2009 OWCP referred appellant to vocational rehabilitation. In reports dated June 4 to August 6, 2009, the rehabilitation specialist noted contacting her to develop a rehabilitation plan; however, she did not believe she was physically capable of working in any capacity. The rehabilitation specialist suspended rehabilitation pending OWCP action.

In a letter dated August 18, 2009, OWCP advised appellant that, based on information from the rehabilitation specialist, she had discontinued good faith participation in OWCP vocational rehabilitation program because she believed that she was incapable of work. It instructed her to contact the specialist and make a good faith effort by participating in the rehabilitation program or show good cause for discontinuing her effort. The vocational rehabilitation could be terminated and appellant's compensation reduced.

Appellant submitted a July 14, 2009 report from Dr. Melissa Mahr, a Board-certified orthopedic surgeon, who noted appellant's history of severe osteoarthritis of both knees. Dr. Mahr found that appellant was unable to work or fulfill the job requirements of her job.

In a letter dated November 10, 2009, OWCP requested that Dr. Mahr review the report of Dr. Hom and address whether she concurred or disagreed with his findings

In a December 9, 2009 report, the rehabilitation specialist noted that appellant continued to obstruct rehabilitation and believed she was not capable of working.

By letter dated February 3, 2010, OWCP notified appellant that it proposed to reduce her compensation pursuant to section 8113(b) of FECA based on her probable wage-earning capacity had she not failed to apply for and undergo vocational rehabilitation. It provided her 30 days to make a good effort to participate in the rehabilitation effort or show good cause for not

participating. Appellant's compensation would be reduced to reflect her probable wage-earning capacity had she completed the training program.

On February 17, 2010 appellant contacted OWCP and asserted that she did not refuse to participate in rehabilitation. She submitted a February 23, 2010 report from Dr. Mahr, who noted that appellant stopped work in 2006 secondary to pain and a severe anxiety disorder. Dr. Mahr noted that appellant had been unable to undergo further knee replacement. Appellant's knee osteoarthritis continued to worsen and she was on pain medicine for severe chronic pain and undergoing therapy for her anxiety. Dr. Mahr reiterated that appellant remained unable to work.

By decision dated March 5, 2010, OWCP reduced appellant's compensation to zero pursuant to section 8113(b). It found that she failed to undergo the essential preparatory effort of vocational testing to determine what would have been her wage-earning capacity had she undergone the testing and rehabilitation effort. OWCP noted that appellant impeded the rehabilitation effort without good cause. Based on section 10.519 of the implementing regulations, it was assumed in the absence of evidence to the contrary that the vocational rehabilitation effort would have resulted in her return to work at the same or higher wages she earned when injured.

Appellant submitted a February 18, 2010 statement contending that she did not receive notification that she was found noncompliant with vocational rehabilitation and had always participated in the rehabilitation program. She underwent a second opinion examination which was brief and stated that Dr. Hom did not specialize in conditions of the knees. Appellant informed the vocational rehabilitation counselor of her constant pain, medication and panic attacks. Her condition had deteriorated and she needed bilateral knee replacements. On March 24, 2010 appellant informed OWCP that there was a misunderstanding regarding her participation in rehabilitation. She expressed an interest in a good faith effort to participate in vocational rehabilitation. Appellant reiterated that she required knee replacement surgery.

In a March 25, 2010 form, appellant requested reconsideration. She submitted a March 22, 2010 report from Dr. Mahr who diagnosed severe knee osteoarthritis and anxiety disorder. Dr. Mahr noted that appellant was to have a total knee replacement on December 6, 2010; but, surgery was cancelled as appellant had a severe panic attack. She stated that appellant's complaints of severe pain required chronic narcotic use. Dr. Mahr noted that appellant was unable to drive while taking narcotic medicine, could not perform her job functions and was unable to walk or sit for prolonged periods.

In a June 22, 2010 decision, OWCP denied appellant's reconsideration request finding that it was insufficient to warrant further review of the merits of her claim.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>2</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in

---

<sup>2</sup> *Id.* at § 8128(a).

section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain 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>

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>5</sup>

### ANALYSIS

OWCP reduced appellant’s compensation benefits to zero on March 5, 2010 pursuant to 5 U.S.C. § 8113(b) based on her probable wage-earning capacity had she not failed to apply for or participate in vocational rehabilitation. It found that she impeded the rehabilitation effort without good cause. OWCP denied appellant’s March 25, 2010 reconsideration request, without a merit review. The issue is whether she met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits of her claim.

Appellant asserted that she was not notified of being found noncompliant with vocational rehabilitation and had participated in OWCP’s rehabilitation program. She noted meeting with the vocational rehabilitation counselor and informing her of constant pain, medication and panic attacks. Appellant further contended that Dr. Hom’s examination was brief and he was not a knee specialist. Her assertions do not establish that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Although appellant asserted that she was not notified of noncompliance, the record shows OWCP issued letters on August 18, 2009 and February 3, 2010 advising her about her failure to participate in vocational rehabilitation. The letters were sent to her address of record. The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have been received at the mailing address in due course. This is known as the “mailbox rule.”<sup>6</sup> Regarding appellant’s assertions that she did not

---

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> See *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>6</sup> *W.P.*, 59 ECAB 514 (2008).

refuse to participate in vocational rehabilitation, she previously made these assertions before OWCP<sup>7</sup> and she did not submit any further evidence corroborating her assertions.

Appellant argued on reconsideration that she had disabling pain; but the underlying issue is not her residual symptoms or degree of disability. The issue is whether she refused to participate in vocational rehabilitation without good cause. Appellant's assertions regarding her symptoms and ability to work are insufficient to reopen her claim as the submission of evidence and argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

In support of her reconsideration request, appellant also submitted Dr. Mahr's March 22, 2010 report that reiterated the diagnoses of severe knee osteoarthritis and anxiety disorder. Dr. Mahr found that appellant was unable to perform her job and unable to drive while taking narcotic medicine. Although this report is new, it is essentially duplicative of the physician's prior reports. It is well established that evidence which repeats or is duplicative of that already of record is of no evidentiary value.<sup>9</sup>

The Board 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, 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.

On appeal, appellant asserts that her work-related condition is worsening and that she never refused to participate in vocational rehabilitation. The Board notes that it has jurisdiction of whether OWCP properly denied a merit review of the claim. As explained, appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).<sup>10</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

---

<sup>7</sup> See *supra* note 5.

<sup>8</sup> See *L.T.*, Docket No. 09-1798 (issued August 5, 2010).

<sup>9</sup> See *Johnnie B. Causey*, 57 ECAB 359 (226).

<sup>10</sup> Should appellant wish to begin participation in vocational rehabilitation efforts, she should contact, in writing, the district Office of OWCP which services her claim. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813.17(f) (February 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2011  
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