

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

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**T.H., Appellant**

**and**

**U.S. POSTAL SERVICE, ROCKY MOUNT  
CARRIER ANNEX, Rocky Mount, NC,  
Employer**

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**Docket No. 11-689  
Issued: August 18, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 18, 2011 appellant filed a timely appeal from a nonmerit July 19, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration.<sup>1</sup> The final merit decision of record is dated July 10, 2009. There is no merit decision within 180 days of January 18, 2011 the date appellant filed her appeal with the Board. Therefore, pursuant to Federal Employees' Compensation Act (FECA)<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

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<sup>1</sup> In computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. See *John B. Montoya*, 43 ECAB 1148 (1992). In this case, the 180-day time period began to run on Tuesday, July 20, 2010, the day after OWCP's July 19, 2010 decision. The 180<sup>th</sup> day from July 20, 2010 was Sunday, January 16, 2011. Because the 180<sup>th</sup> day fell on a Sunday, the period was extended to the following day. But in 2011, Monday, January 17, 2011 was a federal holiday, Martin Luther King Jr., Day. This extended the 180-day period to Tuesday, January 18, 2011 the day appellant's request for appeal was postmarked. Appellant's appeal is thus timely filed.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration.

On appeal, appellant asserts that witness statements and medical reports establish that an accepted May 15, 2007 work incident caused a claimed injury.

## FACTUAL HISTORY

This is appellant's second appeal before the Board in this case. By decision dated March 25, 2009,<sup>3</sup> the Board affirmed an October 5, 2007 OWCP decision denying an emotional condition claim on the grounds that she had not established the claimed causative incident as factual, being forced to work with her door shut on May 15, 2007. The Board also affirmed a January 17, 2008 nonmerit OWCP decision denying appellant's request for reconsideration. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.<sup>4</sup>

In an April 21, 2009 letter, appellant requested reconsideration.<sup>5</sup> She submitted additional evidence.

By decision dated July 10, 2009, OWCP modified its October 5, 2007 decision to find that appellant established the May 15, 2007 incident as factual. It found, however, that appellant's reaction to being made to work with her office door shut on May 15, 2007 was not compensable as it pertained to her dislike of how her supervisor monitored her work and implemented administrative procedures in the workplace.

In a March 17, 2010 letter, appellant requested reconsideration. She asserted in her statement that a May 17, 2007 incident occurred in the performance of duty and that she obtained a grievance settlement. Appellant did not submit proof of a grievance settlement nor any additional evidence showing error or abuse by the employing establishment.

By decision dated July 19, 2010, OWCP denied appellant's March 17, 2010 request for reconsideration on the grounds that her request did not raise substantive legal questions or include new, relevant evidence.

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<sup>3</sup> Docket No. 08-1967 (issued March 25, 2009).

<sup>4</sup> Appellant filed a petition for reconsideration before the Board on April 28, 2009, alleging that OWCP misfiled evidence about the May 15, 2007 incident. On May 11, 2009 the Director filed an answer asserting that appellant's petition did not cite any error or fact or law. On June 26, 2009 the Board issued an order denying appellant's petition for reconsideration.

<sup>5</sup> Appellant's April 21, 2009 petition for reconsideration before the Board was also addressed to OWCP and stated that she would submit new evidence for OWCP's consideration. In a May 11, 2009 memorandum, the Office of the Solicitor advised OWCP not to issue a decision on appellant's reconsideration request until after the Board responded to appellant's petition for reconsideration of the Board's March 25, 2009 decision.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>6</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations 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.<sup>7</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>9</sup> She need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>10</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to appellant's application for reconsideration and any evidence submitted in support thereof.<sup>11</sup>

## ANALYSIS

OWCP issued the July 10, 2009 decision finding that appellant established the May 15, 2007 incident as factual but not within the performance of duty. Appellant requested reconsideration on March 17, 2010, asserting that the May 17, 2007 incident occurred in the performance of duty.

As noted above, the Board does not have jurisdiction over the July 10, 2009 OWCP decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her March 17, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. Her argument was that a May 17, 2007 incident occurred in the performance of duty. The underlying issue in this case concerned whether the May 15, 2007 incident was established as a compensable factor. Appellant's submission does not address the basis upon which the claim was denied. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>9</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>10</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>11</sup> *Annette Louise*, 54 ECAB 783 (2003).

case.<sup>12</sup> A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case.

**CONCLUSION**

The Board accordingly 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 witness statements and medical reports establish that an accepted May 15, 2007 work incident caused a claimed injury. This contention concerns the merits of the claim. As stated, the Board does not have jurisdiction over the merits of the claim on the present appeal. Therefore, the Board cannot address appellant's argument.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 19, 2010 is affirmed.

Issued: August 18, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).