

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

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**E.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Phoenix, AZ, Employer**

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**Docket No. 11-203  
Issued: September 13, 2011**

*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 November 3, 2010 appellant filed a timely appeal from a May 26, 2010 decision of the Office of Workers' Compensation Programs (OWCP) which denied merit review. Because more than 180 days elapsed from the most recent merit decision of January 6, 2010 to the filing of this appeal on November 3, 2010, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

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

**FACTUAL HISTORY**

On February 3, 2006 appellant, then a 49-year-old city carrier, filed a (Form CA-1), traumatic injury, alleging that on October 12, 2005 she injured her back while lifting buckets of

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

mail at work. OWCP accepted her claim for displacement of a lumbar intervertebral disc at L4-5 without myelopathy. It authorized surgery. On October 14, 2005 an L4-L5 laminectomy microdiscectomy and left sided L4-L5 foraminotomy was performed. Appellant did not return to work after surgery.

Appellant was treated by Dr. Jose R. Parker, a Board-certified family practitioner for ongoing low back pain, bilateral sciatic and bladder issues subsequent to surgery. Dr. Parker opined that she was totally disabled from work. In a November 6, 2007 report, he addressed treatment for low back pain related to an October 11, 2005 work injury. Appellant reported not being able to return to work in any capacity. In a July 15, 2008 report, Dr. Parker noted that she was returning to work light duty and recommended that she gradually resume work duties for 4 hours a day initially, two to three days a week and work within 15 minutes of her home.<sup>2</sup>

OWCP also referred appellant to several second opinion physicians. This included Dr. Ali Araghi, a Board-certified orthopedic surgeon. In reports dated February 29 and May 22, 2008, he found that she could return to work full time with physical restrictions.

On May 5, 2009 the employing establishment offered appellant a limited-duty position as a modified mail processing clerk effective May 23, 2009 with an annual salary of \$55,576.00. The position complied with the restrictions set forth by Dr. Parker. In reports dated March 9 to June 30, 2009, a vocational rehabilitation specialist noted the employing establishment offered appellant a limited-duty position which was in conformance with her work restrictions but she refused the position asserting that it exceeded the driving and lifting restrictions set forth by Dr. Parker.

In a July 1, 2009 letter, OWCP advised appellant that the job offer constituted suitable work. Appellant was informed that she had 30 days to accept the position or provide reasons for refusing it; otherwise, she risked termination of her compensation benefits. In a letter dated July 31, 2009, she rejected the job offer and asserted the work requirements exceeded the restrictions of Dr. Parker. Appellant contended that she continued to have neurological problems and caudal equines syndrome since her injury. She also could not return to the employment site because she had filed sexual harassment charges against a coworker prior to her injury.

On August 7, 2009 OWCP advised appellant that the position of a modified mail processing clerk was suitable work. It noted that it considered her reasons for refusing the position and found them to be unacceptable. OWCP afforded appellant 15 additional days to accept the job offer.

On August 31, 2009 appellant rejected the offered position noting that the coemployee against whom she filed a sexual harassment suit worked in the same building. She submitted an Equal Employment Opportunity (EEO) complaint filed on October 14, 2004.

In a September 3, 2009 decision, OWCP terminated appellant's entitlement to monetary compensation on the grounds that she refused an offer of suitable work.

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<sup>2</sup> Appellant was offered jobs on September 21, 2006 and July 3, 2008, which she declined.

On November 24, 2009 appellant requested reconsideration. She submitted an August 13, 2009 report from Dr. J. Carvel Jackson, a Board-certified physiatrist, who treated her for weakness, pain and loss of sensation in the saddle distribution with difficulty with bowel and bladder issues. Dr. Jackson noted a history of the lumbar L4-5 disc herniation with associated radiculopathy, cauda equinus syndrome, status post decompression discectomy and diabetes. He opined that appellant was significantly limited for gainful employment but recommended a part-time modified light duty. Dr. Jackson advised that she start work at four, six-hour days a week with additional restrictions. In an October 29, 2009 report, he noted that appellant returned to work part time and reported an increase in back and neck pain. In prescription notes dated December 17, 2009, Dr. Jackson recommended she work 24 hours a week, comprised of four six-hour days with a 24-hour break between each two-day work period with additional restrictions.

In a decision dated January 6, 2010, OWCP denied modification of the September 3, 2009 decision.

On February 12, 2010 appellant requested reconsideration. She indicated that on May 5, 2009 Dr. Parker informed her that he was not qualified to perform an impairment evaluation so she sought treatment from Dr. Jackson. Appellant contended that OWCP improperly determined that Dr. Jackson was not authorized or competent to evaluate her impairment for a schedule award. She further asserted that she filed an EEO complaint for sexual harassment and did not want to work in the same facility as the accused coemployee. Appellant sought a schedule award and authorization to change physicians to Dr. Jackson.

Appellant submitted a May 5, 2009 letter from OWCP to Dr. Parker, reports from Dr. Jackson dated August 13, October 29 and December 17, 2009, an EEO complaint and the January 6, 2010 OWCP decision, all previously of record. In a May 13, 2009 report, Dr. Parker evaluated her for a low back condition and impairment of the lower extremities. He advised that he was not qualified to perform an impairment evaluation and referred her to an occupational specialist. Dr. Parker reviewed the May 5, 2009 job offer and stated that appellant felt that she was unable to perform the type of work required for the job. He noted that her disability determination and fitness to return to work should be determined by an occupational health physician. Appellant also submitted an October 23, 2009 Industrial Commission of Arizona worker's report form from Dr. Azmi Nasser, a Board-certified physiatrist, who noted that she was injured on October 11, 2005 and recommended physical therapy and chiropractic treatment. She submitted witness statements from coworkers Jack Owens, Raul Candia and Joe Cuccinotto, who noted that appellant complained of being sexually harassed by a coworker. Appellant submitted December 29, 2009 and January 27, 2010 requests for a change in physicians. In an April 22, 2010 note, Dr. Jackson advised that he was a Board-certified physiatrist and had extensive training and experience in evaluating and managing occupational injuries. He noted that he was qualified to treat appellant for her occupational disease and perform an impairment evaluation.

On March 1, 2010 appellant filed a claim for a schedule award.

In letters dated March 10 and 25, 2010, OWCP denied authorization for appellant to change physicians noting that Dr. Jackson was not a specialist in occupational medicine and was therefore not qualified to treat her.

In a May 26, 2010 decision, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>3</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 section 10.606(b)(2) of the implementing federal regulations, which provides 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>4</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>5</sup>

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>6</sup>

### **ANALYSIS**

OWCP terminated appellant's compensation benefits pursuant to section 8106(c) on September 3, 2009 on the grounds that she refused an offer of suitable work. It denied her February 12, 2010 reconsideration request, without a merit review and she appealed this decision to the Board. The issue 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 February 12, 2010 request for reconsideration, appellant asserted that OWCP improperly denied her claim for a schedule award. She indicated that her treating physician was

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> See *Daniel Deparini*, 44 ECAB 657 (1993).

not qualified to perform an impairment evaluation so she sought treatment from Dr. Jackson, but, OWCP determined that he was not qualified to evaluate her. Appellant asserted that she filed an EEO complaint for sexual harassment on October 14, 2005 and did not want to return to work in the same facility as the accused coemployee. These assertions do not show that OWCP erroneously applied or interpreted a specific point of law nor do they advance a relevant legal argument not previously considered by OWCP. Appellant's assertions on reconsideration relate to a schedule award evaluation, her request for a change in physicians and a harassment claim and are insufficient to warrant reopening her claim. The submission of evidence and argument which does not address the particular issue involved, her refusal of an offer of suitable work, does not constitute a basis for reopening a case.<sup>7</sup>

In support of her reconsideration request, appellant submitted a May 13, 2009 report from Dr. Parker who evaluated her for a low back condition and impairment of the lower extremities. Dr. Parker noted that she indicated that she was unable to perform the duties described in the job offer. Although this report is new, it is not relevant as he did not provide his own opinion as to whether appellant was medically capable of performing the offered job. Instead, Dr. Parker repeated her opinion on her ability to perform the offered job and noted that any determination regarding her ability to work should come from an occupational medicine physician. Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant submitted an October 23, 2009 Arizona workers' report form from Dr. Nasser who noted that she was injured on October 11, 2005 and recommended physical therapy and chiropractic treatments. Similarly, she submitted an April 22, 2010 note from Dr. Jackson who advised he had extensive training and experience in evaluating and managing occupational injuries and was an appropriate specialist to treat her occupational disease and perform an impairment evaluation. Although these reports are new, they are not relevant because they do not address the particular issue involved, whether the position offered appellant was suitable. Drs. Nasser and Jackson failed to state whether appellant's diagnosed conditions precluded her from performing the modified position at the time her compensation was terminated. Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant submitted a May 5, 2009 letter from OWCP to Dr. Parker, reports from Dr. Jackson dated August 13, October 29 and December 17, 2009, an EEO complaint and the January 6, 2010 OWCP decision, all previously of record. However, this evidence is not relevant because it is duplicative of evidence previously of record and previously considered by OWCP.<sup>8</sup> Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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<sup>7</sup> See *L.T.*, Docket No. 09-1798 (issued August 5, 2010).

<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel DeParini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

Appellant submitted witness statements from coworkers who noted that she complained of being sexually harassed at work and requests for a change in physicians dated December 29, 2009 and January 27, 2010. However, this evidence is insufficient to reopen her claim as the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> To the extent that appellant asserts that claimed sexual harassment precluded her from being medically able to perform the job in the location where it was offered, the Board notes that this pertains to a medical issue and she did not, as noted, provide new medical evidence on reconsideration supporting that she was medically unable to accept the offered job.

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 she was entitled to a schedule award and should be paid for her work injury. The Board notes, however, that it only has jurisdiction over 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).

#### **CONCLUSION**

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

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<sup>9</sup> See *L.T.*, *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 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