

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

G.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Ana, CA, Employer**

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**Docket No. 12-171
Issued: July 3, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 7, 2011 appellant filed a timely appeal from a May 11, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration without a merit review. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed from September 30, 2010, the date of the most recent OWCP merit decision, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.²

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence with her appeal request. The Board may not consider new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *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).

FACTUAL HISTORY

On July 11, 2006 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim alleging that, as she was getting mail out of the back of the vehicle on July 10, 2006, the vehicle door came down on the top of her head. She claimed injuries to her head, neck and shoulder areas. OWCP accepted the claim for head contusion and neck strain/sprain. Appellant received medical treatment on July 11, 2006 and was released to modified work. On June 26, 2008 she was declared permanent and stationary and at a baseline for her underlying condition with no objective evidence that the July 10, 2006 work-related incident materially altered her underlying degenerative disease process of the cervical spine.

On April 24 and 28, 2009 appellant filed a claim for compensation (Form CA-7) for compensation beginning April 2, 2009 because no work was available. In a May 7, 2009 letter, OWCP advised her of the deficiencies in her claim and requested additional evidence.

By decision dated September 10, 2009, OWCP denied the claimed recurrent disability for work beginning April 2, 2009 and continuing on the grounds that the evidence did not establish that the disability was causally related to the accepted July 10, 2006 injury.

In a June 25, 2010 letter, appellant requested reconsideration and submitted additional evidence. By decision dated September 30, 2010, OWCP denied modification of the prior decision. It found that appellant submitted insufficient medical evidence on causal relationship.

On February 10, 2011 appellant requested reconsideration. She submitted a photograph of her vehicle with the back door up in the same manner as on the date of injury, a picture of her swollen neck after the door hit her head and 19 pages of internet information from “emedicinehealth” on neck strains and spinal stenosis. While appellant stated a November 18, 2010 medical report from Dr. Michael P. Acord was enclosed, this report was not received with her February 10, 2011 request.

By decision dated May 11, 2011, OWCP denied appellant’s request for reconsideration on the grounds that her request neither raised substantive legal arguments nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP’s regulations provide that the evidence or argument submitted by 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.³ Section 10.608(b) of OWCP’s regulations provide that when an application for reconsideration 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.⁴ The Board has held that

³ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141 (2007).

⁴ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495 (2008).

the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

On February 10, 2011 appellant requested reconsideration of the September 30, 2010 decision which denied her claim of recurrence of disability commencing April 2, 2009. Her request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by OWCP. She is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit relevant and pertinent new evidence not previously considered by OWCP. The underlying issue is medical in nature. As noted, the November 18, 2010 medical report from Dr. Acord was not of record at the time of the May 11, 2011 decision. The photographs of appellant's neck allegedly taken after the injury occurred, 19 pages of internet information on neck strains and spinal stenosis and the photograph of her vehicle are not relevant to the medical issue of whether she sustained a recurrence of disability commencing April 2, 2009. The submission of evidence that does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁶

The evidence submitted by appellant did not show that OWCP erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by OWCP. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁷

On appeal, appellant described how the work-related injury completely changed her life. The Board does not have jurisdiction over the merits of this case. Appellant's argument on appeal does not show that she met one of the three regulatory criteria for reopening her claim for a merit review, which is the only issue the Board may consider on this appeal. For the reasons noted above, the Board finds that the evidence submitted in support of her request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

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

⁵*Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁶ *See D. Wayne Avila*, 57 ECAB 642 (2006).

⁷ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration 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).

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board