

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, ATOCHA STATION,
Ponce, PR, Employer**

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**Docket No. 12-403
Issued: June 14, 2012**

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 November 21, 2011 appellant filed a timely appeal from the June 6 and August 19, 2011 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision of March 10, 2011 and the filing of this appeal on November 21, 2011, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

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

On appeal, appellant argued that she submitted a witness statement on reconsideration that supported her claim. She also made numerous arguments concerning the merits of the case. Appellant contends, *inter alia*, that the employing establishment did not make reasonable

¹ 5 U.S.C. § 8101 *et seq.*

accommodations with regards to her injury, that OWCP ignored her medical restrictions, that OWCP erred in ignoring medical evidence from her treating physician, and that aggravations of an initial employment injury are covered under FECA.

FACTUAL HISTORY

On November 30, 2010 appellant, then a 44-year-old distribution and window clerk, filed an occupational disease claim alleging that she suffered from lumbosacral radiculopathy and discogenic low back pain. She claimed it was a consequential injury from a previous employment injury of January 11, 2006 under OWCP claim File No. xxxxxxx448.² Appellant alleged that her physician determined that continued exposure to her present employment could be harmful to her health. By decision dated March 10, 2011, OWCP denied appellant's claim as she had not established fact of injury. It determined that she had not established that the injury or event occurred as described and had not provided medical evidence containing a medical diagnosis in connection with the injury or events.

On March 28, 2011 appellant requested reconsideration. She submitted no new evidence or argument.

In a decision dated June 6, 2011, OWCP denied appellant's request for merit review.

By letter dated June 11, 2011, appellant again requested reconsideration. In support of the reconsideration request, she submitted a statement by Rudy Colon, a coworker, dated January 17, 2006 wherein Mr. Colon stated that on January 11, 2006 around 2:50 p.m., he witnessed a parcel fall down from a queue and strike her left knee. Mr. Colon stated that appellant tried to hold the parcel when it was falling, but it was too heavy. He noted that he removed the heavy parcel since she was not able to push it away from her.

In requesting reconsideration, appellant contended that after reading Mr. Colon's statement she realized that he described the exact time that her back and neck were injured, and that he erroneously believed that her back and neck conditions were the consequence of her knee injury of 2006. She argued that the injury to her knee did help create more stress to her back and neck thereby worsening these conditions. Appellant also noted that she began to suffer from these conditions some time after the accident and was not aware that they were related to the January 11, 2006 employment injury.

By decision dated August 19, 2011, OWCP denied appellant's request for reconsideration without conducting a merit review.

² The record reveals that under OWCP claim File No. xxxxxxx448, OWCP accepted that appellant sustained a left knee injury on January 11, 2006 when a parcel fell on it while in the performance of duty.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

OWCP denied appellant's claim as it found that she did not establish fact of injury. Specifically, it determined that she did not establish that an event or injury occurred as alleged and did not provide medical evidence establishing a medical diagnosis in connection with the alleged events. The last merit decision in this case, OWCP denial of appellant's claim, was issued on March 10, 2011. As previously stated, this decision was issued over 180 days prior to the filing of this appeal on November 21, 2011 and accordingly the Board does not have jurisdiction to review the merits of the case.⁷ The only issue before the Board is whether OWCP properly denied appellant's reconsideration requests.

In appellant's first reconsideration request she submitted no new evidence nor did she make any argument. In the second request for reconsideration, she submitted a statement by Mr. Colon, her coworker, describing an injury that occurred on January 11, 2006. Mr. Colon's statement is dated January 17, 2006. His statement is not relevant to establishing fact of injury for the current claim. Appellant's claim was denied because she did not submit medical evidence sufficient to support that she suffered a consequential injury causally related to the accepted 2006 injury. Although appellant indicated that she submitted a new medical report, no new medical evidence was received by OWCP in support of appellant's reconsideration requests. Without rationalized medical evidence to support her claim, it must be denied.⁸ The Board notes that appellant made numerous arguments on appeal that address the merits of her claim. However, as previously stated, the Board does not have jurisdiction to review the merits of the claim.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." *Id.* at § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *Id.* at § 501.3(e).

⁸ *Maurissa Mack*, 50 ECAB 498 (1999).

Because appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP, it did not abuse its discretion in denying her request for reconsideration of the merits of her case.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19 and June 6, 2011 are affirmed.

Issued: June 14, 2012
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