

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

J.S., Appellant

and

**PEACE CORPS, Pretoria, South Africa,
Employer**

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**Docket No. 12-485
Issued: June 20, 2012**

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 January 4, 2012 appellant filed a timely appeal from the December 22, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As more than 180 days elapsed from the last merit decision of March 30, 2011 to the filing of this appeal, 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 reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal appellant contends that the medical evidence of record is sufficient to establish her inability to return to work.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 20, 2007 appellant, then a 55-year-old volunteer teacher, filed a traumatic injury claim alleging that she was tripped by two dogs and fell down stairs sustaining a torn ligament in her right ankle. On December 31, 2007 OWCP accepted her claim for other enthesopathy of ankle and tarsus, left. On May 6, 2008 it further accepted appellant's claim for sprain of ankle, distal tibiofibular ligament, right and sprain of knee, lateral collateral ligament, bilateral. By decision dated December 4, 2009, OWCP terminated her wage-loss benefits for the reason that the weight of the medical evidence established that she could perform the duties of the position she held when injured and was no longer disabled. The termination of appellant's compensation benefits was affirmed by a hearing representative in a decision dated June 1, 2010 and modification was denied on August 30, 2010 and March 30, 2011. By decision dated April 14, 2011, OWCP terminated appellant's medical benefits effective April 14, 2011 as she no longer had any residuals from her accepted work injury. On May 6, 2011 appellant requested review of the written record with regard to the April 14, 2011 decision terminating medical benefits. In a decision dated September 16, 2011, the hearing representative reversed the termination of medical benefits and they were reinstated.

By letter dated September 26, 2011, appellant requested reconsideration of the denial of her wage-loss benefits. She contended that she was no longer qualified to work for the Peace Corps and that she requested wage-loss benefits for the period December 4, 2009 through July 31, 2010.

In an April 6, 2011 report, Dr. Warren J. Strudwick, appellant's treating Board-certified orthopedic surgeon, stated that appellant's magnetic resonance imaging scan clearly demonstrated a tear of her medial meniscus. He assessed appellant with bilateral patellofemoral joint disease and medial meniscal tear of her right knee and stated that she cannot return to her full and customary duties. In a November 28, 2011 report, Dr. Strudwick stated that appellant continued to have symptoms in both knees, with anterior knee pain and medial knee pain on the right. He assessed appellant with bilateral patellofemoral joint disease and medial meniscal tear, right knee.

By decision dated December 22, 2011, OWCP denied review of appellant's case on the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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 To be entitled to a merit review

² 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." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

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.⁴ 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.⁵

ANALYSIS

OWCP terminated appellant's compensation benefits for the reason that she was no longer disabled due to her accepted employment injuries. The merits of that decision are not before the Board. The only issue on appeal is whether OWCP properly denied reconsideration.

Appellant submitted evidence with her request for reconsideration, which consisted of reports by Dr. Strudwick, dated April 6 and November 28, 2011. However, Dr. Strudwick did not address the issue of appellant's disability from work. Reports which do not address the issue are insufficient to require the reopening of a case as they are irrelevant.⁶ Dr. Strudwick's conclusion reached in his April 6, 2011 report that appellant could return to her full and customary duties is repetitive of his earlier reports. The Board has held that evidence which is repetitive or duplicative of evidence existing in the record is not sufficient to warrant further merit review.⁷ Appellant did not contend that OWCP erroneously interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.⁸

CONCLUSION

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

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *See Barbara J. Williams*, 40 ECAB 649 (1989).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *W.H. Van Kirk*, 28 ECAB 542 (1977).

⁸ *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 decision of the Office of Workers' Compensation Programs dated December 22, 2011 is affirmed.

Issued: June 20, 2012
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