

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

T.M., claiming as widow of G.M., Appellant)	
)	
and)	Docket No. 11-1882
)	Issued: March 27, 2012
DEPARTMENT OF THE ARMY, U.S. ARMY)	
MATERIEL COMMAND, Tooele, UT, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 15, 2011 appellant filed a timely appeal from a February 16, 2011 Office of Workers' Compensation Programs' (OWCP) nonmerit decision denying her request for reconsideration of the merits of her claim. As more than 180 days has elapsed from the date of the last merit decision of January 21, 2010 to the filing date of the current appeal on August 15, 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 refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 7, 2007 the employing establishment filed an official superior's report of employee's death (Form CA-6). Appellant, the employee's widow, filed a survivor's claim for death benefits (Form CA-5) on July 19, 2007 which OWCP denied on September 28, 2007 on the grounds that the employee's death on July 6, 2007 was not causally related to the factors of his employment on that day.²

On October 18, 2007 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative.

An oral hearing was held before an OWCP hearing representative on May 21, 2008.

By decision dated August 5, 2008, an OWCP hearing representative set aside the September 28, 2007 decision and remanded the case for further development.

By decision dated November 5, 2008, OWCP denied appellant's claim for death benefits.

On December 1, 2008 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative, which was held on March 23, 2009.

Subsequently, appellant submitted a July 6, 2007 emergency medical services (EMS) pre-hospital care report and a November 21, 2008 report by Dr. Stephen L. Kimberley, a Board-certified internist, who concluded that appellant's preexisting heart disease "would not have been fatal ... had it not been for the exertion in high heat.... I believe that they are causally related."

By decision dated June 9, 2009, an OWCP hearing representative set aside the November 5, 2008 decision and remanded the case for further development.

By decision dated January 21, 2010, OWCP denied appellant's claim for death benefits.

On January 11, 2011 appellant, through her attorney, requested reconsideration. Appellant submitted articles on bundles and working in hot environments, as well as newspaper articles on people who died of heat strokes. She also resubmitted the November 21, 2008 report by Dr. Kimberley and a July 6, 2007 EMS report.

By decision dated February 16, 2011, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit new relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

² On July 6, 2007 the employee, then a 39-year-old security officer, engaged in a work-related exercise from 9:24 a.m. until 9:58 a.m. resulting in fatigue and excessive sweating. He was in the break room when he fell out of a chair in which he was seated. The employee was pronounced dead at 12:55 p.m.

an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.⁵ 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.⁶ 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.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of her January 11, 2011 request for reconsideration, appellant submitted articles on bundles and working in hot environments, as well as newspaper articles on people who died of heat strokes. The Board finds that submission of these articles did not require reopening appellant's case for merit review. These reports do not constitute medical evidence as the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship.¹⁰ As the underlying issue is medical in nature, the Board finds that these articles do not constitute pertinent new and relevant evidence and are not sufficient to require OWCP to reopen the claim for consideration of the merits.

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the 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).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(2). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ See *A.L.*, *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *William C. Bush*, 40 ECAB 1064 (1989).

Appellant also resubmitted the November 21, 2008 report by Dr. Kimberley and a July 6, 2007 EMS report. The Board finds that submission of these reports did not require reopening appellant's case for merit review because they had been previously reviewed by OWCP. As the reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence. Therefore, appellant has not established a basis for reopening her case.¹¹

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Because appellant only submitted duplicative or repetitive evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.¹²

On appeal appellant argues the merits of her case. The Board, however, does not have jurisdiction over the merits of her claim.

CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen appellant's claim for further consideration of the merits of her claim under 5 U.S.C. § 8128.

¹¹ See *D.K.*, 59 ECAB 141 (2007).

¹² See *L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board