

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

D.C., Appellant)	
)	
and)	Docket No. 12-1038
)	Issued: October 3, 2012
DEPARTMENT OF LABOR, OCCUPATIONAL)	
HEALTH & SAFETY ADMINISTRATION,)	
Boston, MA, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2012 appellant filed a timely appeal from a November 9, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As OWCP did not issue a merit decision within 180 days of the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated November 10, 2010, the Board affirmed October 1 and November 20, 2009 OWCP decisions denying appellant's

¹ 5 U.S.C. § 8101 *et seq.*

traumatic injury claim.² It found that she had not submitted rationalized medical evidence to establish that kneeling on April 3, 2008 caused either a new injury or an aggravation of a preexisting condition. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On December 18, 2010 appellant requested reconsideration. She asserted that OWCP did not consider the June 17, 2008 report of Dr. Robert G. Davis, a Board-certified orthopedic surgeon. Appellant resubmitted Dr. Davis' June 17, 2008 form report. He diagnosed posttraumatic osteoarthritis and recommended surgery on the left knee and a magnetic resonance imaging (MRI) scan study of the right knee. Dr. Davis listed the history of injury as a direct injury to the left knee on the floor, a meniscal tear, degenerative joint disease and right knee secondary pain. He checked "yes" that the condition of both knees was caused or aggravated by employment and found that appellant was partially disabled beginning April 3, 2008.

In a decision dated February 16, 2011, OWCP denied appellant's request for reconsideration on the grounds that it was not timely and did not establish clear evidence of error.

Appellant appealed to the Board. In an order dated October 26, 2011, the Board found that she had timely requested reconsideration as a right to reconsideration within one year accompanied any merit decision on the issues, including a decision by the Board.³ It remanded the case for OWCP to consider appellant's request for reconsideration under the standard for timely reconsideration requests.

By decision dated November 9, 2011, OWCP denied appellant's request for reconsideration after finding that she had not submitted evidence or raised argument sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128. It noted that the June 17, 2008 report from Dr. Davis was already of record.

On appeal appellant argues that she submitted a June 17, 2008 letter from Dr. Davis. She noted that she was beginning to experience problems with her right hip.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ its regulations provide that 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

² Docket No. 10-567 (issued November 10, 2010). On April 16, 2008 appellant, then a 51-year-old program assistant, filed a traumatic injury claim alleging that she injured her knees on April 3, 2008 while kneeling on the floor looking for a cable outlet.

³ *Order Remanding Case*, Docket No. 11-920 (issued October 26, 2011).

⁴ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[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 20 C.F.R. § 10.606(b)(2).

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 which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁰

ANALYSIS

By decisions dated October 1 and November 20, 2009, OWCP denied modification of its finding that the medical evidence was insufficient to establish that appellant sustained an injury on April 3, 2008. On November 10, 2010 the Board affirmed the October 1 and November 20, 2009 decisions. On December 18, 2010 appellant requested reconsideration.

The issue presented on appeal 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 December 18, 2010 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but she did not submit any pertinent new and relevant medical evidence in this case. In support of her request for reconsideration, appellant submitted a June 17, 2008 form report from Dr. Davis. However, the June 17, 2008 form report from Dr. Davis was previously considered by OWCP in its September 16, 2008 decision and by the Board in its decision dated November 10, 2010. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

On appeal appellant argues that she submitted a June 17, 2008 letter from Dr. Davis and noted that she was beginning to have right hip problems. As discussed, however, the report from Dr. Davis duplicated evidence already of record and thus did not warrant reopening her case for further merit review.¹² Additionally, the issue of whether appellant has a right hip problem

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁹ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁰ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹¹ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

¹² *Id.*

related to employment is medical in nature and must be resolved through the submission of probative medical evidence.¹³

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 constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under section 8128.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2012
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹³ See *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).