

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

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**B.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cincinnati, OH, Employer**

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**Docket No. 12-1111  
Issued: October 15, 2012**

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 24, 2012 appellant, through her attorney, filed a timely appeal from the March 23, 2012 Office of Workers' Compensation Programs' (OWCP) nonmerit decision denying her request for further merit review of her claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The last merit decision was OWCP's decision dated August 23, 2011. The Board has jurisdiction over final decisions of OWCP. *See* 20 C.F.R. § 501.2(c). For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

## **FACTUAL HISTORY**

On September 25, 2009 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on September 24, 2009 she sustained injuries to her right side, lower back, hip and leg due to bending while loading a delivery bar code sorter (DBCS) machine. She returned to work on September 26, 2009.

In an October 6, 2010 duty status report, Dr. Joseph Pflum, a Board-certified family practitioner, indicated that appellant's diagnosis was due to her injury and diagnosed degenerative joint disease of the spine.

By decision dated November 22, 2010, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's condition was caused by employment duties.

On May 17, 2011 appellant requested reconsideration.

Appellant submitted medical evidence which included several reports dating from April 2009 to December 2010. In a September 29, 2009 report, Dr. Pflum noted that appellant was having continued difficulty with her back and knee due to work. He noted that the union indicated that she had to lift, twist and bend in the course of using a machine at work that helped her sort mail. Additionally, appellant lifted trays out of a container to put in the machine. Dr. Pflum diagnosed degenerative joint, lumbar spine and a lumbar disc with radiculopathy with the date of "onset" of September 22, 2009. In a December 12, 2010 report, he noted that appellant was seen on April 28, May 12, July 28, September 29 and November 17, 2009. Dr. Pflum also noted that she was seen on April 1, June 30, July 16, October 6 and November 22, 2010. He diagnosed lumbar herniated discs and lumbar degenerative disc disease. Dr. Pflum noted that appellant had a problem due to the lifting, bending, twisting, pushing, pulling and heavy lifting that she does at her job. He advised that her treatment included "[avoidance] of the offending activity, medical and physical therapy. The course of the condition has been stable. Appellant has neither improved nor regressed. The condition is in my opinion related to her job that causes and aggravated her current medical condition." OWCP also received September 25, 2009 discharge notes from a nurse.

In an August 23, 2011 decision, OWCP denied modification of its November 22, 2010 decision finding the medical evidence insufficient.

On December 22, 2011 appellant's representative requested reconsideration and submitted new evidence. In an October 31, 2011 report, Dr. Pflum noted that appellant followed up in his office after an April 27, 2009 visit to the emergency room. He noted that appellant related that she injured her back at work and he made a change in her treatment plan. Dr. Pflum indicated that appellant followed up with him on May 12, 2009 and she had not seen much improvement. He indicated that, from May 9 through September 2009, she had a light-duty position. Dr. Pflum noted that she had recovered from her pain and returned to her original position in September 2009 when she reinjured her back in September 2009.

OWCP received an undated statement from appellant on December 27, 2011. Appellant described her duties at work. She also indicated that in 2006 she had a prior job injury and was placed on light duty for five months. Appellant noted that in September 2009 that she was told to go back to the DBCS machine, which was her bid job. She explained that on September 24, 2009 she threw her back out.

In a December 11, 2011 duty status report, Dr. Pflum indicated that appellant's diagnosis was due to her injury and diagnosed degenerative disc disease. He indicated that the injury occurred due to bending, lifting and loading machines with letter trays.

By decision dated March 23, 2012, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>3</sup> OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>4</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>5</sup>

### **ANALYSIS**

Appellant disagreed with the denial of her claim for a traumatic injury. Her representative requested reconsideration on December 22, 2011. The underlying issue on reconsideration was whether appellant submitted sufficient medical evidence to show that work duties caused her claimed injury. However, appellant did not establish a basis for reopening her claim for a merit review.

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b).

<sup>5</sup> *Id.* at § 10.608(b).

On reconsideration, appellant submitted an undated statement which was received by OWCP on December 27, 2011. She essentially described her duties at work and described her injury on September 24, 2009, which she attributed to utilizing a machine at work and which she believed was the cause of her injury. The Board notes that the issue in the present claim is medical in nature. Appellant's duties are not in dispute. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup> Appellant's description of her work does not otherwise show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

OWCP also received an October 31, 2011 report from Dr. Pflum who noted that he had treated appellant subsequent to an April 27, 2009 visit to the emergency room. Dr. Pflum noted that appellant had recovered from her pain and returned to her original position in September 2009 when she reinjured her back in September 2009. In the December 11, 2011 duty status report, he indicated that her diagnosis was due to her injury and diagnosed degenerative disc disease. Dr. Pflum indicated that the injury occurred due to bending, lifting and loading machines with letter trays. The Board notes that these reports are essentially duplicative of Dr. Pflum's October 6 and December 12, 2010 reports in the manner in which causal relationship is addressed. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>7</sup> Appellant did not provide any relevant and pertinent new evidence to establish that she sustained an injury on September 24, 2009 in the performance of duty.

Thus, the new medical evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review.

As appellant has not met one of the three regulatory criteria for reopening her claim for a merit review, OWCP properly denied her request for reconsideration.

### CONCLUSION

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

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<sup>6</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>7</sup> *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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