

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

C.L., Appellant

and

**PEACE CORPS, Santo Domingo, Dominican Republic,
Employer**

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) **Docket No. 13-1175**
) **Issued: August 12, 2013**
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Appearances:
Mark Feedman, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 25, 2013 appellant, through her representative, filed a timely appeal from the September 26, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the July 12, 2011 decision of OWCP. Because more than 180 days has elapsed between the last merit decision and the filing of this appeal on March 25, 2013, the Board lacks jurisdiction to review the merits of this claim.³

¹ Under the Board's *Rules of Procedure*, if using the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 25, 2013, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. §§ 8101-8193.

³ 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. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

OWCP accepted that on May 1, 1972 appellant, then a 33-year-old volunteer, sustained an injury while riding a mule which caused several conditions, including a fracture of her left femur, shortening of her left leg, left leg gait abnormality and generalized abnormality of osteoarthritis of her left leg/hip.

On April 19, 2005 appellant requested benefits for medical supplies and home modifications which were required because of the deformity resulting from the 1972 injury. In a February 6, 2006 decision, OWCP denied benefits in the form of the requested home modifications of adding an elevator and installing full spectrum lighting.

In a January 10, 2008 decision, OWCP modified its February 6, 2006 decision in part, but appellant's claim remained denied for purchase of an elevator and full spectrum lighting modifications.

In a January 6, 2009 letter, appellant, through her representative, requested reconsideration of OWCP's January 10, 2008 decision. He provided extensive argument alleging that OWCP created improper statements of accepted facts and did not accept work-related conditions which he felt should have been accepted. Appellant's representative also argued that OWCP improperly indicated that appellant was not totally disabled.

In a November 2, 2009 decision, OWCP denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In a May 12, 2011 order,⁴ the Board set aside OWCP's November 2, 2009 decision and remanded the case to OWCP in order to conduct a full merit review of appellant's benefits claim.

In a July 12, 2011 decision, OWCP denied appellant's claim for home modifications finding that her claim to purchase and install an elevator to the second floor of her home residence was not appropriate. It was noted that, since all daily living tasks for bedroom, bath, and kitchen were on the main level, there was no purpose for attaining access to the second level. OWCP also found that the claim for installation of full spectrum lighting was not supported by evidence showing that the need for this item resulted from the work injury to the left hip. It noted that benefits are payable only for expenses incurred for treatment of an accepted diagnosis and there was no relation between impairment of the left hip and lighting appellant's home.

In a July 10, 2012 letter, appellant, through her representative, requested reconsideration of OWCP's July 12, 2011 decision denying her request for home modifications. He provided extensive argument alleging that OWCP created improper statements of accepted facts and did

⁴ Docket No. 10-1483 (issued May 12, 2011).

not accept work-related conditions which he felt should have been accepted. Appellant's representative also argued that OWCP improperly indicated that appellant was working as a peer counselor for 10 hours per week, rather than being in total disability status, and he mentioned several medical reports dated between September 2003 and June 2011 which he believed showed that appellant was totally disabled. In an August 6, 2012 letter, he argued that appellant's claim involved more than medical issues but also involved the need to modify and amend OWCP documents and decisions.⁵

In a September 26, 2012 decision, OWCP denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a) noting that her submitted argument and evidence were repetitious and irrelevant to the main issue of the present claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁶ 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.⁷ 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.⁸ 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.⁹ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁰ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ While a 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.¹²

⁵ Appellant submitted several medical documents, including a June 13, 2011 report of an attending physician, but these documents did not address her home modification claim.

⁶ Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹² *John F. Critz*, 44 ECAB 788, 794 (1993).

ANALYSIS

OWCP issued a decision on July 12, 2011 denying appellant's claim for home modifications. Appellant requested reconsideration of this decision on July 10, 2012.

As noted above, the Board does not have jurisdiction over the July 12, 2011 OWCP decision. 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 application 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. Her argument was that OWCP created improper statements of accepted facts and did not accept work-related conditions which she felt should have been accepted. Appellant also claimed that OWCP improperly stated that she was not totally disabled from all work. However, this argument had already been made to OWCP and it had been considered and denied by OWCP. Therefore, the presentation of such repetitious argument would not require reopening appellant's claim for merit review. Moreover, appellant's argument would not be relevant to the main issue of the present case, *i.e.*, a claim for the necessity of home modification which is essentially a medical issue to be resolved by the submission of probative medical evidence. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any medical evidence which was both new and relevant in this case.¹³

The Board accordingly 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁴

CONCLUSION

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

¹³ Appellant submitted several medical documents, including a June 13, 2011 report of an attending physician. However, the documents did not address her home modification claim.

¹⁴ On appeal, appellant and her representative made extensive arguments in support of the present claim, but they were repetitive of other arguments that had previously been made.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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