

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

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**A.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Jacksonville, FL, Employer**

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**Docket No. 12-1649  
Issued: January 17, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 23, 2012 appellant filed a timely appeal from a February 1, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for further review of the merits of his claim. The last merit decision of record was OWCP's December 19, 2011 decision. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, as more than 180 days has elapsed from the last merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

**ISSUE**

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

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

<sup>2</sup> For decisions issued prior to November 19, 2008, a claimant had up to 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 November 3, 2011 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a bilateral wrist and back injury that day while pushing a cart full of mail. Appellant notified his supervisor and sought medical treatment on November 3, 2011. The employing establishment controverted the claim.

In a November 3, 2011 report, Dr. John H. Polak, Board-certified in family medicine, listed a history that appellant was pushing a cart and experienced low back pain and wrist pain. He diagnosed low back pain, bilateral wrist tendinopathy and carpal tunnel syndrome.

By letter dated November 14, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence needed and directed to submit it within 30 days.

In a November 17, 2011 narrative statement, appellant noted that on November 3, 2011 he was pushing a cart weighing over 800 pounds to another staging area. He felt a sharp stabbing pain in both wrists and the right lower back. Appellant reported that the pain was severe and immediately notified his supervisor. He further noted that he had preexisting injuries to his right wrist in claim File No. xxxxxx617 and underwent surgery on his lower back from claim File No. xxxxxx652.

In medical reports dated November 3 to 30, 2011, Dr. Polak stated that on November 3, 2011 appellant was pushing a wire at work when he experienced low back and bilateral wrist pain extending upward to the right shoulder. He diagnosed low back pain, right wrist pain from a May 19, 2011 injury and mild carpal tunnel syndrome. Dr. Polak diagnosed of low back pain and possible lumbar radiculopathy. He reported that appellant's back pain/lumbar strain from the November 3, 2011 employment incident should have resolved and that his arm, wrist and carpal tunnel syndrome were from a prior May 19, 2011 injury.

By decision dated December 19, 2011, OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that he sustained an injury. It found that the November 3, 2011 incident occurred as alleged, however, that the medical reports of record failed to provide a firm diagnosis causally related to the accepted employment incident.

On January 23, 2012 appellant requested reconsideration of OWCP's decision.

Appellant resubmitted Dr. Polak's medical reports already of record. He also submitted a November 16, 2011 attending physician's report (Form CA-20) from Dr. Polak listing appellant's date of disability as November 3, 2011. Dr. Polak stated that appellant had a history of carpal tunnel syndrome and diagnosed bilateral wrist pain and acute carpal tunnel syndrome. He further noted that appellant was diagnosed with lumbar disc disease or low back pain and possible radiculopathy.

By decision dated February 1, 2012, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP 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.<sup>3</sup> Section 10.608(b) of OWCP regulations provide that 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.<sup>4</sup>

## ANALYSIS

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

The only OWCP decision before the Board on appeal is the February 1, 2012 decision, denying appellant's application for review. Because more than 180 days elapsed from issuance of the most recent OWCP merit decision on December 19, 2011 to the filing of appellant's appeal on July 23, 2012, the Board lacks jurisdiction to review the merits of his claim.<sup>5</sup>

The issue presented 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 his January 23, 2012 application for reconsideration, he did not establish that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. He resubmitted Dr. Polak's reports which were already of record and considered by OWCP in its December 19, 2011 decision. This was not new evidence requiring OWCP to reopen the case for review of the merits.<sup>6</sup>

Appellant also submitted a November 16, 2011 attending physician's report from Dr. Polak which diagnosed lumbar disc disease or low back pain and possible radiculopathy. Dr. Polak further diagnosed bilateral wrist pain and acute carpal tunnel syndrome. While this report was new, it was essentially duplicative of the physician's November 3 to 30, 2011 reports previously submitted. The diagnosis of bilateral carpal tunnel syndrome was noted in reports previously considered by OWCP which the physician associated with a different claim involving a May 19, 2011 injury. This report does not provide a firm medical diagnosis with detailed medical rationale explaining how appellant's alleged injury was caused or aggravated entirely or in part by the November 3, 2011 employment incident. The underlying issue in this case was whether appellant sustained an injury causally related to the November 3, 2011 employment

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<sup>3</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>4</sup> *K.H.*, 59 ECAB 495 (2008).

<sup>5</sup> *Supra* note 2.

<sup>6</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393 (1984).

incident. That is a medical issue which must be addressed by relevant medical evidence.<sup>7</sup> In this case, while appellant submitted new evidence, it was not relevant in addressing the issue at hand.

On appeal, appellant argues that his back injury was caused by the November 3, 2011 employment incident and that he submitted all of the paperwork Dr. Polak had for this claim File No. xxxxxx450. As noted, a claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not submit new or relevant medical evidence.

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

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).