

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

N.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Sarasota, FL, Employer)

Docket No. 12-1726
Issued: January 28, 2013

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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2012 appellant, through her attorney, filed a timely appeal from a June 20, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As the last merit decision was issued June 9, 2011, more than 180 days prior to 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 claim for further review of the merits under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 16, 2010 appellant, then a 57-year-old transportation security officer, filed a traumatic injury claim alleging that on December 14, 2010 she injured both knees and her rotator cuff when she tripped on a ramp and fell while walking toward the airport terminal. The employing establishment controverted the claim, arguing that she was not on the premises at the time of her injury.

By decision dated January 28, 2011, OWCP denied appellant's claim after finding that she was not in the performance of duty at the time of the December 14, 2010 incident. It determined that her injury did not occur on property either owned or operated by the employing establishment.

On January 28, 2011 appellant requested a review of the written record. In a decision dated June 9, 2011, an OWCP hearing representative affirmed the January 28, 2011 decision. He found that appellant was not on the premises of the employing establishment at the time of her injury.

On February 22, 2012 appellant, through her attorney, requested reconsideration. She resubmitted December 14, 2010 and May 3, 2011 witness statements, a May 6, 2010 letter from the employing establishment to the hearing representative, a December 15, 2010 addendum to a chronological log of injury, a January 31, 2011 letter from the employing establishment regarding continuation of pay, a February 19, 2011 statement from appellant and e-mail messages dated January 28 and May 3, 2011. Appellant further resubmitted a December 17, 2010 x-ray of the left shoulder and a December 17, 2010 magnetic resonance imaging (MRI) scan study of the cervical spine. She also provided a February 15, 2011 MRI scan study of the left shoulder.

By decision dated June 20, 2012, OWCP denied appellant's request for reconsideration based on its finding that the evidence submitted was either duplicative or irrelevant and thus insufficient to warrant reopening her case for further review of the merits under section 8128.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ 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.⁴ When a claimant fails to meet one of the above standards, OWCP

² 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 his own motion or on application.”

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.⁵

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.⁶ 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.⁷ 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.⁸

ANALYSIS

In decisions dated January 28 and June 9, 2011, OWCP denied appellant's traumatic injury claim after finding that she was not in the performance of duty at the time of the alleged December 14, 2010 work incident. It determined that she was not on the premises of the employing establishment at the time of her trip and fall. On February 22, 2012 appellant requested reconsideration.

The Board does not have jurisdiction over the January 28 and June 2011 merit decisions. The issue 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 February 22, 2012 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. She resubmitted evidence, including December 2010 and May 2011 witness statements, her February 19, 2011 statement and correspondence from the employing establishment. Appellant also resubmitted a December 17, 2010 MRI scan study of the cervical spine and x-ray of the left shoulder. This evidence, however, duplicated evidence already of record. 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.⁹ Appellant also submitted a February 15, 2011 MRI scan study of the left shoulder. The underlying issue in this case, however, is whether she sustained an injury on the premises of the employing establishment. That is a factual issue that must be addressed by relevant factual evidence. Appellant did not submit any pertinent new and relevant factual evidence addressing this issue.

The Board finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). She 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

⁵ *Id.* at § 10.608(b).

⁶ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁷ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

⁹ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

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 claim for further review of the merits under section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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