



## **FACTUAL HISTORY**

On August 16, 2011 appellant, then a 51-year-old equal opportunity assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2011 she sustained injuries in the performance of duty. She stated that her office was moving to a different floor and she had been cleaning and preparing files which exacerbated her “physical and mental disabilities.” Appellant described the nature of her injuries as “fibromyalgia, pain musculoskeletal, left knee, support cane and secondary physiological.”

Appellant submitted an August 17, 2011 note from Dr. Andrew Feller, a family practitioner. She received treatment commencing August 4, 2011 and was able to return to work on August 13, 2011.

By decision dated October 5, 2011, OWCP denied the claim for compensation. It found that the incident on August 4, 2011 occurred as alleged, but the medical evidence was insufficient to establish causal relation.

In a letter dated October 17, 2011, appellant requested reconsideration of her claim. She stated that she had been unable to send documents by fax and was told by an employing establishment compensation manager that she could have requested a time extension, but she was unaware that such a request could be made. Appellant submitted physical therapy records. She also submitted an October 4, 2011 report from Dr. Jay Kimmel, an orthopedic surgeon, providing results on examination. Dr. Kimmel stated that appellant continued to have right knee pain. Appellant received an injection of Lidocaine and Depo-Medrol. Dr. Kimmel also completed an October 4, 2011 form report stating that she should remain out of work until October 20, 2011 due to a right medial meniscus tear.

By decision dated November 22, 2011, OWCP determined that appellant’s application for reconsideration was insufficient to warrant merit review of the claim. It stated, “Although the claimant states that she has attached medical evidence from various providers, [OWCP] has in receipt physical therapy notes dated September 15 to 30, 2011, which is irrelevant to the issues at hand. To date no medical evidence from a physician has been received.”

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP’s regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP.<sup>3</sup> 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the

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<sup>2</sup> 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at anytime on his own motion or on application.”)

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

### **ANALYSIS**

Appellant submitted an October 17, 2011 application for reconsideration. She submitted medical evidence from Dr. Kimmel on October 31, 2011 consisting of reports dated October 4, 2011. OWCP did not review this evidence in the November 22, 2011 decision, as it specifically noted that no medical evidence from a physician had been received. The implementing federal regulations provide that “OWCP will consider all evidence submitted appropriately.” In this case, OWCP did not consider the evidence submitted with appellant’s request.<sup>5</sup> The Board has also held that OWCP must review all the evidence received prior to the issuance of its final decision.<sup>6</sup>

The case will be remanded to OWCP to properly consider the medical evidence of record with respect to the reconsideration request. After such further development as OWCP deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision as OWCP failed to consider the evidence of record.

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<sup>4</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>5</sup> *Id.* at § 10.119.

<sup>6</sup> *M.M.*, Docket No. 11-1852 (issued April 12, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 22, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 14, 2013  
Washington, DC

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

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

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