

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

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**P.A., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 13-1431  
Issued: November 6, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 29, 2013 appellant filed a timely appeal from an April 22, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As more than 180 days elapsed from the last merit decision dated July 9, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 merit review under 5 U.S.C. § 8128(a).

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

## **FACTUAL HISTORY**

On October 17, 2011 appellant, then a 36-year-old composite/plastic fabricator leader, filed a traumatic injury claim alleging that at 7:00 p.m. on September 17, 2011 she injured her back, neck and shoulders in a motor vehicle accident. The employing establishment controverted the claim, arguing that the accident occurred after work hours.<sup>2</sup>

The record establishes that appellant was on travel status to San Diego at the time of the September 17, 2011 motor vehicle accident. In a statement dated October 18, 2011, Kenneth Peterson, a coworker, related that after work on September 17, 2011 he and other coworkers, including appellant, travelled together to the beach to “enjoy the sites of southern California. After a short while we decided to go get a bit[e] to eat.” Mr. Peterson related that their car was rear-ended at a traffic light.

By letter dated October 26, 2011, the employing establishment controverted the claim, arguing that the accident occurred during an activity outside the performance of duty and not reasonably incidental to appellant’s employment. It noted that on Saturday, September 17, 2011 appellant worked from 5:20 a.m. until 3:20 p.m. The employing establishment noted that Mr. Peterson related that she and the others involved in the accident “were at the beach walking around and then they decided to stop and get something to eat.” It also maintained that the location where the incident occurred was not a direct travel route between appellant’s workstation and hotel.

In a statement dated November 1, 2011, appellant related that on September 17, 2011 she worked from 6:00 a.m. until 4:00 p.m. She returned to her hotel after work and agreed to meet coworkers at 6:00 p.m. for dinner. Appellant stated:

“We decided to eat at Hodad’s located in Pacific Beach. After arriving, we discovered that it was about an hour to be seated. We decided to head to Mission Beach, which was just up the road to find a place for dinner. Mission Beach did not have any appealing restaurants; it was decided to head back towards the hotel and try to find a place along the way.”

Appellant indicated that a few minutes after they left the parking lot at Mission Beach, a car hit them from behind.

By decision dated December 2, 2011, OWCP denied appellant’s claim after finding that her injury did not occur within the performance of duty. It found that she was engaged in sightseeing after work hours and was not in the performance of duty at the time of the motor vehicle accident.

On February 3, 2012 appellant requested reconsideration. In a statement dated February 10, 2012, she related that she returned to her hotel after work. Around 5:00 p.m. appellant traveled in a government vehicle with coworkers to have dinner. The first restaurant had a long wait so she went with her coworkers to find another restaurant. Appellant maintained

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<sup>2</sup> Appellant’s work schedule was listed as from 7:20 a.m. to 4:02 p.m., Monday through Friday.

that the accident occurred around 6:00 p.m. and that she and her coworkers “did not have time to have done any sightseeing prior to our main objective which was to have dinner after our workday.”

Appellant submitted a response to OWCP’s questionnaire. She related that the accident occurred less than 20 minutes from her duty station and that she was traveling to a restaurant at the time of the motor vehicle accident. Appellant asserted that she was within 15 miles of her hotel when the accident occurred.<sup>3</sup>

By decision dated July 9, 2012, OWCP denied modification of its December 2, 2011 decision.

On January 12, 2013 appellant requested reconsideration. In a statement dated January 11, 2013, she maintained that she was not sightseeing on the day of the accident but instead trying to find a restaurant. The initial restaurant chosen had a long wait. The next restaurant was eight miles from her hotel and the accident occurred about an hour and a half after work. Appellant stated, “This was not a ‘recreational’ trip as we set out to find a dining place. I feel that it is reasonable to go home, shower, and then leave to eat and have this not be recreational. We were within 8 miles and only 1½ hours after work; this to me does not seem unreasonable.” She resubmitted her response to OWCP’s questionnaire and her February 10, 2012 statement.

In a nonmerit decision dated April 22, 2013, OWCP denied appellant’s request for reconsideration for section 8128. It found that her statement on reconsideration conflicted with her previous statement and thus was not relevant to the issue at hand.

On appeal appellant asserted that she was at her location for work and that the accident occurred a reasonable time and distance from her hotel. She maintained that she did not consider her activities recreational.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> OWCP’s 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.<sup>5</sup> 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.<sup>6</sup> When a claimant fails to meet one of the above standards, OWCP

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<sup>3</sup> In a statement dated June 11, 2011, the employing establishment noted that the incident report indicated that the accident occurred at 7:00 p.m. at a place that was not on a direct route between her hotel and workstation.

<sup>4</sup> 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.”

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

In decisions dated December 2, 2011 and July 9, 2012, OWCP denied appellant's claim, after finding that she was not in the performance of duty at the time of the September 17, 2011 motor vehicle accident. On January 12, 2013 appellant requested reconsideration.

The Board does not have jurisdiction over the merit decision dated July 9, 2012. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim. In her January 12, 2013 request for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. Appellant contended that she was not engaged in a recreational activity as she was not sightseeing at the time of her motor vehicle accident; rather, she was looking for a place for dinner around eight miles from her hotel and within an hour and a half after stopping work. Her contentions, however, are repetitious of those previously raised in her November 1, 2011 and February 10, 2012 statements. Evidence or argument which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup>

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence in this case. She resubmitted her response to OWCP's questionnaire and her February 10, 2012 statement; however, as previously discussed, as this evidence duplicated evidence previously submitted and considered by OWCP, it is insufficient to warrant reopening her case for merit review.<sup>12</sup>

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<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

<sup>9</sup> *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>10</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>11</sup> *See Richard Yadron*, 57 ECAB 207 (2005).

<sup>12</sup> *See S.J.*, Docket No. 10-1318 (issued February 3, 2011); *Edward W. Malaniak*, 51 ECAB 279 (2000).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, it properly denied merit review.

On appeal appellant raises arguments addressing the merits of her case. As previously noted, however, the only issue before the Board is whether OWCP properly denied her reconsideration request.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request to reopen the claim for further merit review under section 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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