

United States Department of Labor  
Employees' Compensation Appeals Board

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S.G., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, North Syracuse, NY, )  
Employer )

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Docket No. 14-797  
Issued: August 14, 2014

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 25, 2014 appellant filed a timely appeal from the October 31, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration without conducting a merit review. Because more than 180 days elapsed from the most recent merit decision dated August 10, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the 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 for reconsideration under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On November 30, 2010 appellant, then a 34-year-old transportation security officer, filed an occupational disease claim, alleging that she developed low back pain radiating into her legs and muscle spasms while in the performance of duty. She became aware of her condition on August 26, 2009 and realized that it was causally related to her work on September 24, 2009. Appellant's supervisor noted that appellant sustained a separate lumbar injury at work on September 20, 2006 and was totally disabled from September 21, 2006 to February 4, 2007. Appellant returned to work at limited duty on February 5, 2007 and worked intermittently thereafter. She stopped work on November 1, 2009 and did not return.

From September 16, 2009 to February 7, 2011, appellant was treated by Dr. Stephen Robinson, a Board-certified orthopedist, for a work-related back injury which occurred while pulling and lifting luggage. Dr. Robinson diagnosed degenerative disc disease of the lumbosacral spine without myelopathy, a herniated lumbar disc without myelopathy, low back pain, low back syndrome, lumbar radiculitis and numbness. From September 30, 2009 to August 13, 2010 appellant was also treated by Dr. Eric A. Tallarico, a Board-certified orthopedic surgeon, for low back pain radiating to the right hip and right lower extremity. Dr. Tallarico opined that appellant's back injury was related to the accident that occurred at work. On November 2, 2009 Dr. Joseph Catania, a Board-certified orthopedist, treated appellant for low back pain radiating to the buttocks and lower extremity. He opined that appellant's injury was related to the accident that occurred at work. From January 22, 2010 to January 7, 2011, appellant was treated by Dr. Robert Tiso, a Board-certified orthopedic surgeon, for work-related low back pain radiating into the right buttock.

By letter dated March 11, 2011, OWCP advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition to specific employment factors. No additional information was received.

In a decision dated April 26, 2011, OWCP denied appellant's claim as the evidence was not sufficient to establish that the occupational events occurred as alleged. Further, the only medical evidence of record pertained to her 2006 injury claim.

On September 7, 2011 appellant requested reconsideration. She submitted a report from Dr. Robinson dated August 22, 2011 who treated her for a back injury sustained on September 20, 2006 while pulling and lifting luggage while at work. Dr. Robinson diagnosed low back pain and opined that appellant's complaints were causally related to her back injury of 2006 and she was totally disabled. Appellant also submitted a statement specifying her work duties.

In a decision dated December 29, 2011, OWCP denied appellant's claim. It found that the claimed work activities were established but that the medical evidence was insufficient to establish a causal relationship between the occupational factors and her diagnosed medical condition.

On May 8, 2012 appellant requested reconsideration. She submitted a September 21, 2011 report from Dr. Anne M. Calkins, a Board-certified orthopedic surgeon, who diagnosed lumbar herniated pulposus without myelopathy and lumbar radiculopathy. Dr. Calkins opined that appellant developed exacerbation of her pain while on the job which consisted of constant twisting and lifting luggage onto an x-ray belt and bending, pushing and pulling luggage. In an April 30, 2012 report, Dr. Robinson noted that appellant returned to light duty on August 16, 2009 and was required to stand, bend and twist. She experienced unbearable back pain and stopped working on November 2, 2009. Dr. Robinson opined that appellant's symptoms were the direct result of her employment and that she remained totally disabled.

In a decision dated August 10, 2012, OWCP denied modification of the December 29, 2011 decision.

On July 28, 2013 appellant requested reconsideration. She advised that she was requesting reconsideration "based on newly enclosed evidence." However, no additional evidence was submitted to the record.

In an October 31, 2013 decision, OWCP denied appellant's request for reconsideration. It found that her request did not raise any substantive legal questions or include new or relevant evidence to warrant further merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>2</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

"(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

"(ii) Advances a relevant legal argument not previously considered by OWCP; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8128(a).

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

<sup>4</sup> *Id.* at § 10.608(b).

### ANALYSIS

OWCP denied appellant's claim on the grounds that she failed to provide sufficient medical evidence to establish that her low back condition was causally related to her work duties. It denied her reconsideration request without a merit review.

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 her 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 establish that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. On July 28, 2013 appellant requested that OWCP reconsider the August 10, 2012 decision and noted that she was submitting additional medical evidence that would establish her claim. No additional evidence was submitted prior to OWCP's decision. Appellant's assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant's low back condition is causally related to her workplace exposures. That is a medical issue which must be addressed by relevant new medical evidence.<sup>5</sup> Appellant did not submit any new and relevant medical evidence in support of her claim.

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.

On appeal, appellant disagrees with OWCP's decision denying her claim and stated that she submitted sufficient evidence to establish her claim. As noted, the Board does not have jurisdiction to review the merits of her claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

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<sup>5</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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