

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

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**P.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 14-956  
Issued: August 5, 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  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 20, 2014 appellant filed a timely application for review from an October 15, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) declining her request for reconsideration. Because more than 180 days elapsed from August 20, 2012, the date of the most recent merit decision, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

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

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

## **FACTUAL HISTORY**

On February 10, 2012 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date, she was involved in a head-on car collision in which she injured her right shoulder. Appellant's supervisor checked a box indicating that appellant had been injured in the performance of duty.

With her claim, appellant submitted two bills from Punxsutawney Area Hospital.

On July 11, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to its inquiries and submit a narrative medical report from an attending physician including dates of examination and treatment, the history and date of injury given to the physician, a detailed description of findings, results of all x-ray and laboratory tests, a diagnosis and clinical course of treatment and an opinion based on medical explanation as to how the claimed work incident caused or aggravated her claimed injury.

Appellant responded on July 18, 2012. She noted that she informed the employing establishment as soon as the car collision occurred and that she had been delivering mail along her route on that day. Appellant stated that her elbow was hurt after the incident, and that it had been x-rayed to ensure that there was no injury. She noted that there was no injury. Appellant stated her understanding that it was the policy of the employing establishment that she be seen at an emergency room following an accident.<sup>2</sup>

Appellant submitted unsigned discharge instructions dated February 10, 2012.

By decision dated August 20, 2012, OWCP denied appellant's claim for compensation. It found that she had not provided any medical evidence containing a medical diagnosis in connection with the traumatic event of February 10, 2012. OWCP accepted that appellant was a federal civilian employee who filed a timely claim, and that the evidence supported that the traumatic incident occurred as described. The decision was sent to the address of record, listed on her Form CA-1.

In a record of a telephone conversation dated June 14, 2013, appellant stated that she had not received the denial letter of August 20, 2012, and asked to speak to a claims examiner.

Appellant submitted an x-ray report from Dr. Kamal Khalaf, a Board-certified radiologist, dated February 10, 2012. Dr. Khalaf noted his impression that appellant's left elbow showed no evidence of fracture, dislocation or any bony abnormality. He stated that she had a normal left elbow.

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<sup>2</sup> The regulations provide that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized in section 20 C.F.R. § 10.303. It may approve payment for medical expenses incurred even if a CA-16 form authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis. *See C.L.*, Docket No. 14-5 (issued May 5, 2014).

In an emergency department report dated February 10, 2012, Dr. Timothy C. Simpson, Board-certified in family medicine, noted that appellant had arrived with arm pain. On examination of appellant's elbow and forearm, he noted bone tenderness. Dr. Simpson noted that appellant had undergone an x-ray of her right elbow, which appeared normal. He did not provide a diagnosis.

On July 10, 2013 appellant requested reconsideration of OWCP's August 20, 2012 decision. She noted that she had finally received a copy of the decision letter.

Appellant submitted an emergency room form consenting to emergency treatment dated February 10, 2012. It noted that the reason for her visit was arm pain. Appellant resubmitted the contemporaneous radiology report of Dr. Khalaf and the emergency department report of Dr. Simpson. She also submitted a police report from the date of the incident.

By decision dated October 15, 2013, OWCP denied appellant's request for reconsideration. It stated that the additional medical evidence received and reviewed, including the radiological report and the emergency room record of February 10, 2012 along with appellant's statement on reconsideration, were devoid of a diagnosis of a condition caused by the incident of February 10, 2012.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>5</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>6</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>7</sup>

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<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

<sup>4</sup> *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

<sup>5</sup> See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

<sup>6</sup> *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

<sup>7</sup> *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

### ANALYSIS

OWCP issued an August 20, 2012 decision denying appellant's claim for compensation. On July 10, 2013 appellant requested reconsideration of this decision.

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 review of the merits of the claim. In her July 10, 2013 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The issue in this case is whether appellant has submitted sufficient medical evidence to establish a diagnosis in connection with the traumatic incident of February 10, 2012. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. She submitted an x-ray report from Dr. Khalaf that stated his impression of a normal left elbow. Appellant's claim concerned pain in her right shoulder and arm, and thus Dr. Khalaf's report is not relevant. Dr. Simpson's report indicates that an x-ray was performed on her right elbow, but that it indicated her right elbow was normal. This report does not contain any relevant evidence to establish that appellant sustained a right shoulder or arm injury.

While this evidence was not previously of record, it is irrelevant to the grounds upon which OWCP denied her claim. Appellant's claim was denied because it lacked a firm medical diagnosis of a condition connected to the February 10, 2012 employment incident. As the reports of Drs. Khalaf and Simpson did not contain such diagnoses, they were not relevant and thus insufficient to require a merit review of appellant's claim.

Similarly, the police report was not relevant to the grounds upon which OWCP denied her claim. The Board accordingly 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 denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 15, 2013 is affirmed.

Issued: August 5, 2014  
Washington, DC

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

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

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