

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

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**K.T., Appellant**

**and**

**U.S. POSTAL SERVICE, LEGREE DANIEL  
PROCESSING & DISTRIBUTION CENTER,  
Harrisburg, PA, Employer**

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**Docket No. 14-678  
Issued: July 7, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 6, 2014 appellant filed a timely appeal from a September 24, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for further merit review. As more than 180 days elapsed from the last merit decision of September 28, 2012 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 over the merits of this 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 April 18, 2012 appellant, then a 44-year-old mail handler, filed a traumatic injury claim alleging a work-related injury on March 17, 2012. In a March 21, 2012 statement, she alleged injury to her right knee. Appellant submitted factual information and medical evidence. The employing establishment controverted the claim.

By letter dated May 10, 2012, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence, which appellant submitted.

By decision dated June 13, 2012, OWCP denied the claim on the grounds that fact of injury had not been established. It found that the evidence failed to establish that a work-related incident occurred on the claimed date of March 17, 2012.

Appellant requested reconsideration and submitted additional factual and medical information. By decision dated September 28, 2012, OWCP denied modification of its June 13, 2012 decision. It found that there were inconsistencies concerning the date of injury and the specific job duties appellant was performing at the time of the injury that cast serious doubt on the validity of her claim. OWCP noted that appellant appeared to be claiming a February 18, 2012 work injury, which was separate from the current claimed incident of March 17, 2012. Also no firm medical diagnosis was provided in any of the reports of record and there was no mention of any injury in those reports.

Appellant requested reconsideration on August 24, 2012. She submitted a 10-page Employee Everything Report for the pay period April 1 to August 2, 2012 along with duplicative evidence of record.

By decision dated November 19, 2012, OWCP denied reconsideration. It found that the the evidence received was not relevant to the issue of fact of injury as it did not clarify the specific job duties that caused the injury on March 17, 2012.

On July 11, 2013 appellant requested reconsideration. No additional evidence was submitted. By decision dated July 22, 2013, OWCP denied reconsideration without reviewing the merits of the case.

On September 17, 2013 appellant requested reconsideration on an appeal request form.

By decision dated September 24, 2013, OWCP denied reconsideration without reviewing the merits of the case.

### 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 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> 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>4</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### ANALYSIS

The underlying issue on reconsideration is whether appellant submitted sufficient evidence relevant to establishing the alleged March 17, 2012 incident. Appellant's September 17, 2013 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

The Board also finds that she did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits. The information related to the retention of and withdrawal of counsel is not relevant to the issue of whether the March 17, 2012 incident occurred as alleged. Thus, this information is insufficient to reopen appellant's claim for further merit review.

The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.<sup>6</sup>

On appeal, appellant argues the merits of her case. However, as noted, the Board does not have jurisdiction over the merits of the case. Appellant may submit the additional evidence

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<sup>2</sup> Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

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

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

to OWCP with a formal, written request for reconsideration under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.<sup>7</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2014  
Washington, DC

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

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

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

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<sup>7</sup> See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).