



On appeal, appellant contends that the medical evidence is sufficient to establish her continuing employment-related residuals and disability.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> In an April 24, 2012 decision, the Board set aside the April 8, 2011 decision, finding that it improperly denied appellant's request for reconsideration of the merits of its termination of her wage-loss compensation and medical benefits under 5 U.S.C. § 8128. The Board remanded the case to OWCP for a merit review of her claim. The relevant facts are set forth below.

OWCP accepted that on December 3, 1998 appellant, then a 72-year-old letter carrier, sustained a lumbosacral and left knee sprain when she tripped on steps at work. In a September 22, 2008 decision, it terminated her wage-loss compensation and medical benefits effective September 28, 2008 based on an April 2, 2008 medical report of Dr. Michael P. Rafiy, a Board-certified orthopedic surgeon and OWCP referral physician. OWCP found that Dr. Rafiy represented the weight of the medical evidence and established that appellant no longer had any residuals or disability causally related to her accepted December 3, 1998 employment injuries.

Following remand, OWCP issued a June 1, 2012 decision. It denied modification of its prior termination decision. OWCP found that the medical evidence submitted did not provide a rationalized medical opinion establishing that appellant had any continuing residuals or disability causally related to her December 3, 1998 employment injuries.

By letter dated May 25, 2013, appellant requested reconsideration. She contended that the accompanying medical evidence outweighed the weight accorded to Dr. Rafiy's medical opinion. A copy of appellant's prescription record from January 1, 2007 to April 16, 2012 indicated that she paid \$113.81 for medication during the stated period. A May 1, 2012 letter from the Office of Personnel Management (OPM) advised appellant that her application for disability retirement had been approved.

In a July 12, 2013 decision, OWCP denied appellant's request for reconsideration without a merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>4</sup> OWCP's regulations provide that a claimant must: (1) establish 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

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<sup>3</sup> Docket No. 12-18 (issued April 24, 2012).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. 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>5</sup> 20 C.F.R. § 10.606(b)(1)-(3).

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> Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>7</sup>

### ANALYSIS

On May 25, 2013 appellant disagreed with OWCP's June 1, 2012 decision, denying modification of its decision to terminate her wage-loss compensation and medical benefits on the grounds that the medical opinion of Dr. Rafiy, an OWCP referral physician, constituted the weight of the medical evidence and established that she no longer had any residuals or disability causally related to the accepted December 3, 1998 employment injuries. She requested reconsideration.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered. In a May 25, 2013 request for reconsideration, she contended that the medical evidence of record and with her request was sufficient to outweigh Dr. Rafiy's opinion. As the underlying issue in this case, termination of benefits based on appellant's accepted lumbosacral and left knee sprains, is medical in nature, it can only be resolved through the submission of medical evidence.<sup>8</sup> Appellant's lay opinion regarding the weight of the medical opinion evidence is not relevant. The Board has held that lay individuals are not competent to render a medical opinion.<sup>9</sup> The Board finds, therefore, that appellant's contention is insufficient to warrant further merit review of appellant's claim.

Appellant submitted a copy of her prescription record from January 1, 2007 to April 16, 2012 which showed the amount she paid for medication during the period. Although the prescription record is new, it is not relevant because it does not contain a physician's opinion addressing whether she continued to have residuals or disability causally related to the December 3, 1998 employment injuries. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>10</sup>

The May 1, 2012 letter from OPM advised that appellant's application for disability retirement had been approved. Since, as noted, the underlying issue is medical in nature, this evidence is not relevant to whether appellant has residuals or disability of the accepted

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<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>8</sup> *See George C. Vernon*, 54 ECAB 319 (2003).

<sup>9</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>10</sup> *D'Wayne Avila*, 57 ECAB 642 (2006).

employment injuries. Appellant did not otherwise submit any pertinent new and relevant medical evidence following OWCP's June 1, 2012 merit decision.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to the requirements under section 10.606(b)(3). OWCP properly denied appellant's May 25, 2013 request for reconsideration.

On appeal, appellant contended that the medical evidence she submitted was sufficient to establish her continuing employment-related residuals and disability. As noted, the Board does not have jurisdiction over the merits of her claim, only whether she submitted sufficient evidence to warrant reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(3). The evidence submitted in support of appellant's request for reconsideration is insufficient to warrant reopening her claim for merit review.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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