

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

C.O., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Charlotte, NC, Employer)

**Docket No. 14-543
Issued: June 19, 2014**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2014 appellant, through her attorney, filed a timely appeal of a November 13, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration. As more than 180 days has elapsed from the issuance of the most recent merit decision of June 12, 2013, to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.² By decision dated June 12, 2013, the Board affirmed a June 18, 2012 OWCP merit decision which denied appellant's traumatic injury claim and an October 10, 2012 OWCP nonmerit decision which denied her request for reconsideration. The facts of the case, as set forth in the prior decision, are hereby incorporated by reference.

On October 11, 2013 appellant, through her attorney, requested reconsideration. She submitted an undated narrative statement reiterating the facts of her case and a May 9, 2012 "Accident Intervention Program" employee interview questionnaire indicating that she slipped and fell while coming down steps on October 10, 2011. Appellant also resubmitted her original claim form dated May 4, 2012 and a September 12, 2012 report from Dr. Kurt Massey, a podiatrist.

By decision dated November 13, 2013, OWCP denied appellant's request for reconsideration of the merits. It found that she did not submit pertinent new and relevant evidence or show that OWCP erroneously applied or interpreted a point of law not previously considered.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her

² Docket No. 13-224 (issued June 12, 2013). On May 4, 2012 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured the tendons in her left foot as a result of slipping and falling down steps while delivering mail in the performance of duty on or about October 10, 2011. By decision dated June 18, 2012, OWCP denied the claim on the basis that the evidence submitted failed to establish that the injury occurred at the time, place and in the manner alleged. On June 21, 2012 appellant requested reconsideration. By decision dated October 10, 2012, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

³ 5 U.S.C. § 8101 *et seq.* 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).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

application for review within one year of the date of that decision.⁶ 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.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

In support of her October 11, 2013 reconsideration request, appellant submitted an undated narrative statement reiterating the facts of her case with a May 9, 2012 “Accident Intervention Program” employee interview questionnaire indicating that she slipped and fell while coming down steps on October 10, 2011. She also resubmitted her original claim form dated May 4, 2012. The Board finds that submission of these documents did not require reopening appellant’s case for further merit review. Appellant’s claim was denied based on the lack of supportive factual evidence to establish the alleged traumatic incident. The documents repeat evidence already in the case record and previously considered. They are cumulative and do not constitute relevant and pertinent new evidence.¹⁰ Therefore, they are not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant also resubmitted a September 12, 2012 report from Dr. Massey. The Board finds that the submission of this report did not require reopening appellant’s case for merit review. This report was previously of record and reviewed by OWCP and the Board in its June 12, 2013 decision. This report repeats evidence already in the case record. It is duplicative and does not constitute relevant and pertinent new evidence. Thus, appellant has not established a basis for reopening her case.¹¹

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Because appellant only submitted cumulative and repetitive evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.¹²

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ See *A.L.*, *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ See *Eugene F. Butler*, *supra* note 8.

¹¹ See *D.K.*, 59 ECAB 141 (2007).

¹² See *L.H.*, 59 ECAB 253 (2007).

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2014
Washington, DC

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

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

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