

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fremont, NE, Employer**

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**Docket No. 14-758
Issued: June 26, 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 February 20, 2014 appellant filed a timely application for review from a September 5, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than 180 days elapsed from December 4, 2012, the date of the most recent merit decision, to the filing of this appeal, and pursuant to the Federal Employees' Compensation Act¹ (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 to reopen her claim for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 12, 2012 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on September 12, 2012, she injured her lower back when she bent over to pick up a letter from the floor. She stopped work on September 12, 2012 and returned to work on September 17, 2012. The employing establishment challenged appellant's claim, noting that she had not provided any medical documentation.

By letter dated October 29, 2012, OWCP requested additional factual and medical evidence from appellant. It noted that she had not submitted factual or medical evidence in support of her claim and afforded her 30 days to submit additional evidence.

In an emergency department report dated September 12, 2012, Dr. Brian Cunningham, Board-certified in emergency medicine, diagnosed appellant with back pain. He noted that she presented with right lower back pain that began approximately 30 minutes before her visit, when she was at work, after she bent down to pick up a letter from the floor. Appellant stated that she had hurt her back one year before and that it had resolved with cortisone injections. She also submitted discharge instructions from the same date. A person with an illegible signature recommended that appellant return to work on September 17, 2012 on sedentary status.

Appellant submitted treatment notes from September 14 through October 2, 2012, which did not contain a legible signature.

In an attending physician's report dated November 23, 2012, Dr. Thomas McKnight, Board-certified in family medicine, diagnosed appellant with degenerative disc disease and related her condition to an incident that occurred two years before.

By decision dated December 4, 2012, OWCP denied appellant's claim. It found that she had not submitted a well-reasoned medical opinion establishing that her diagnosed condition was the result of a traumatic event. OWCP noted that it had received several assessments of back pain, which was not an acceptable diagnosis under FECA. It accepted that appellant had established that she was a federal civilian employee who filed a timely claim that the incident occurred, that a medical condition had been diagnosed; and that she was within the performance of duty.

On August 8, 2013 appellant requested reconsideration of OWCP's December 4, 2012 decision. She did not submit any new evidence or argument to OWCP in support of her request for reconsideration.

By decision dated September 5, 2013, OWCP denied appellant's request for reconsideration. It noted that she had neither raised substantive legal questions regarding the December 4, 2012 decision nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), its 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.² 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.³

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴ 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.⁵ 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.⁶

ANALYSIS

OWCP issued a December 4, 2012 decision denying appellant's claim for compensation. On August 8, 2013 appellant requested reconsideration of this decision. OWCP declined her request for reconsideration on September 5, 2013.

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 her claim. In her August 8, 2013 request for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously interpreted or applied. Thus, appellant 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)(3).

The relevant issue upon reconsideration was whether appellant had established, by rationalized medical evidence, a causal relationship between her diagnosed condition and the traumatic incident of September 12, 2012. A claimant may be entitled to a merit review by submitting new and relevant evidence. However, appellant failed to submit any new and relevant evidence in this case. She submitted no new medical evidence with her request for reconsideration.

On appeal, appellant argues that she had submitted sufficient factual and medical documentation for OWCP to accept her claim. As noted above, the Board does not have jurisdiction over the merits of the December 4, 2012 decision.

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

³ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

⁴ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁶ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 constitute 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 further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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