

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

A.B., Appellant	)	
	)	
and	)	<b>Docket No. 14-50</b>
	)	<b>Issued: May 1, 2014</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>Atlanta, GA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 15, 2013 appellant filed a timely appeal of the August 5, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration. Because more than 180 days elapsed from the most recent merit decision dated March 5, 2013 to the filing of this appeal on October 15, 2013, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On August 29, 2012 appellant, then a 58-year-old legal assistant, filed an occupational disease claim, alleging that she developed tenderness and swelling of the right knee after being

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

relocated to an office with a low desk and her knee was forced into an extended position. She became aware of her condition and realized it was causally related to her employment on August 16, 2012. Appellant did not stop work.

Appellant was treated by Dr. Tedman Vance, a Board-certified orthopedist, on August 24, 2012 for right knee pain. Dr. Vance noted an onset of pain one and a half weeks prior. Appellant reported no injury but noted that her pain was aggravated by bending, climbing stairs and walking. She also submitted a position description for a legal assistant.

On October 17, 2012 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her right knee condition to specific work factors.

In an November 20, 2012 statement, appellant requested to withdraw her claim. She noted that, after speaking with her physician, she was informed that the desk she occupied aggravated her condition and that her desk was an ergonomic misfit. In a November 12, 2012 report, Dr. Vance treated appellant for right hand pain. Appellant reported a trauma at work and noted that the pain worsened because she could not avoid the demands of her job. Dr. Vance diagnosed benign essential tremor, osteoarthritis of the hand, tenosynovitis of the hand and wrist and pain of the hand and forearm.

On December 11, 2012 OWCP denied appellant's claim finding that the medical evidence did not establish that her right knee condition was causally related to the accepted work-related events.

On December 31, 2012 appellant requested reconsideration. She submitted reports from Dr. Vance dated December 6 to 26, 2012. Dr. Vance treated her for right knee pain beginning six days prior. Appellant reported no trauma. Dr. Vance diagnosed effusion and pain of the lower leg joint with possible early arthritis. Appellant submitted a December 12, 2012 magnetic resonance imaging (MRI) scan of the right knee which revealed a radial tear of the medial meniscus, edema representing a partial tear or sprain of the medial patellar of the medial patellar retinaculum and edema involving the medial articular cartilage of the patella.

In a March 5, 2013 decision, OWCP denied modification of the December 11, 2012 decision.

In a June 26, 2013 appeal request form, appellant requested reconsideration. She stated that her initial report of right knee pain included complaints of sitting at a low desk. Appellant noted that Dr. Vance's diagnosis was arthritis and she attempted to stop the processing of her claim because she thought the diagnosis was not consistent with her injury. The pain in her right leg did not start until she occupied a desk that was ergonomically unsuitable for her. Appellant advised that, after Dr. Vance received further medical information on the cause of her elevated pain level, she had right knee surgery. She noted that a medical report was attached; however, no additional medical evidence was received into the record. Appellant submitted five "desk injury photos" but the image quality is poor and essentially not viewable.

In an August 5, 2013 decision, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was insufficient to warrant further merit review.

## LEGAL PRECEDENT

Under section 8128(a) of FECA,<sup>2</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations which provide that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by the OWCP;  
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

## ANALYSIS

OWCP denied appellant’s claim on the grounds that she failed to provide sufficient medical evidence to establish that her right knee condition was causally related to her work duties. It denied her reconsideration request without a merit review.

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, she did not contend that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. In her June 26, 2013 request, appellant noted that her right knee pain pertained to sitting at a low desk. She stated that the pain in her right leg did not start until she occupied a desk that was ergonomically unsuitable for her. Appellant also reported that Dr. Vance performed right knee surgery. These assertions do not show a legal error by OWCP or constitute a new and relevant legal argument. The underlying issue in this case is whether appellant’s diagnosed condition is causally related to her workplace exposures. That is a medical issue which must be addressed by relevant new medical evidence.<sup>5</sup> Appellant did not submit any new or relevant medical evidence in support of her claim. She indicated that a medical report was submitted with her request but no additional medical evidence was received.

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<sup>2</sup> 5 U.S.C. § 8128(a).

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

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

Appellant submitted five “desk injury photos” which contained images of poor quality of her desk area. As noted, the underlying issue in this claim is whether the medical evidence establishes that her claimed condition was caused or aggravated by workplace exposures. The photographs are not relevant to the underlying medical issue. Therefore, this evidence is insufficient to warrant reopening the case for a merit review.

The Board 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 reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2013 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: May 1, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees’ Compensation Appeals Board

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

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