

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

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**T.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Marblehead, MA, Employer**

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**Docket No. 14-127  
Issued: May 12, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 30, 2013 appellant filed a timely appeal from a July 3, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for review of the claim. As more than 180 days have elapsed from the last merit decision, November 8, 2012, and 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 does not have jurisdiction over the merits of this case.

**ISSUE**

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

On appeal, appellant contends that she disagreed with the decision that her ankle pain is not aggravated by her job. She noted her job activities resulted in soft tissue inflammation around the plate and screws and ligament strain which produced ankle pain. Appellant argued

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

that removal of the plate and screws will allow more normal ankle motion and less soft tissue inflammation and ligament strain.

### **FACTUAL HISTORY**

On August 9, 2012 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that her orthopedic surgeon wanted to take out five screws and a plate because of severe swelling and sharp pain in her left ankle.<sup>2</sup> She noted that, as a letter carrier with 500 stops, she walks, climbs stairs, carries mail and gets in out and out of her mail truck 8 to 10 hours a day for five to six days a week. By letter dated August 13, 2012, OWCP controverted appellant's claim.

By letter dated August 23, 2012, OWCP informed appellant that she must submit evidence, including medical evidence, in support of her claim.

In an August 30, 2012 report, Dr. Robert Wood, appellant's treating Board-certified orthopedic surgeon, indicated that appellant was being seen for follow up on her left ankle. He noted that she had swelling and discomfort in the ankle and that the pain was located over the lateral aspect and anterior aspect of the ankle. Dr. Wood also noted mild effusion and soft tissue swelling. He stated that they would proceed with ankle arthroscopy and hardware removal. In September 7 and 10, 2012 reports, Dr. Wood noted that appellant had been followed by his office going back to 2006 for an ankle fracture requiring open reduction and internal fixation. He noted that she sustained a work-related injury again on August 1, 2008 when she rolled her ankle into inversion while working as a letter carrier. Dr. Wood noted that, although appellant had been discharged from their care, as a result of repetitive walking in her line of work as a letter carrier she continued to have persistent ankle pain. He opined that, since the original injury with her ankle was a work-related injury, as well as the aggravation again in 2008 being employment related, it was reasonable to ascertain that her persistent left ankle pain is an employment-related injury. Dr. Wood further stated that appellant's ankle injury is related to her line of work and further noted that the original acute injury was certainly work related and that the repetitive motion of her work has been a contributing factor to her persistent pain.

By decision dated November 8, 2012, OWCP denied appellant's claim as she had not established a medical diagnosis in connection with the accepted events. It also noted that, had she established a diagnosis, her claim would still be denied because she failed to establish that a medical condition was diagnosed in connection with the claimed work factors.<sup>3</sup>

On April 16, 2013 appellant requested reconsideration. She submitted additional reports from Dr. Wood after the November 8, 2012 decision. In a July 24, 2012 report, Dr. Wood noted that appellant was being seen for follow up regarding her left ankle, for which she had an open reduction and internal fixation done back in roughly 2006. He noted that she complained of

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<sup>2</sup> Appellant's supervisor signed the claim form on August 9, 2012 and the form was received by OWCP on August 13, 2012. However, appellant's signature is dated September 7, 2012.

<sup>3</sup> OWCP noted that there was no claim on file for an alleged 2006 employment-related ankle fracture as referenced by Dr. Wood.

ongoing issues with pain and numbness in the posterolateral aspect of the hip and in the ankle directly over the incision. Dr. Wood noted that x-rays showed anatomic reduction and good hardware position of an old fibular fracture with no signs of degeneration. He noted that appellant wished to proceed with surgical intervention, so he recommended an ankle arthroscopy, debridement and hardware removal. In a January 3, 2013 report, Dr. Wood stated that her physical examination is consistent with pain on palpitation over the anterior joint line as well as over the lateral aspect of the ankle over the distal fibula. He recommended hardware removal and ankle arthroscopy debridement. Dr. Wood indicated that he “felt that [appellant’s] current condition is secondary to the injury that she sustained at work.” In a June 4, 2013 report, he stated that he was currently treating appellant for her chronic pain of her left ankle. Dr. Wood noted that she had an initial injury back in 2006, which resulted in open reduction and internal fixation. He noted that appellant healed completely from that but did sustain a second injury while on the job in an inversion-type injury. Dr. Wood noted that her current diagnosis is left ankle painful hardware.

In a July 3, 2013 decision, OWCP denied appellant’s request for reconsideration without conducting a merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</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>5</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>6</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>7</sup>

### **ANALYSIS**

OWCP denied appellant’s claim as she failed to establish a medical condition causally related to the accepted employment conditions of her federal employment. Appellant requested reconsideration and on April 16, 2013, OWCP denied her request for reconsideration without reviewing the case on the merits. The Board does not have jurisdiction over the merits of the

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, “[t]he 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)(2).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

claim and may only address whether appellant's request for reconsideration was properly denied without merit review.<sup>8</sup>

OWCP denied appellant's claim because the medical evidence did not establish that she sustained a diagnosed condition causally related to her accepted employment activities. On reconsideration, she submitted further reports from Dr. Wood. In these reports, Dr. Wood again describes appellant's symptoms of pain, indicated that the current medical condition of her left ankle pain and stated his belief that this pain is secondary to the injury she received at work. His reports are repetitive of his previous reports already reviewed by OWCP. The Board has held that evidence which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.<sup>9</sup> As these reports are repetitive of Dr. Wood's early reports, they do not constitute relevant and pertinent new medical evidence and are insufficient to require OWCP to reopen appellant's case for further review of the merits.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.<sup>10</sup>

On appeal, appellant contends that her ankle pain was aggravated by her job. Her arguments address the merits of her case and, as previously stated, the Board does not have jurisdiction to review the merits of this claim.

### **CONCLUSION**

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

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<sup>8</sup> *Id.* at § 501.3(e).

<sup>9</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

<sup>10</sup> *See L.H., id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 3, 2013 is affirmed.

Issued: May 12, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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