

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

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M.N., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Chester, VA, Employer )

) **Docket No. 14-245**  
) **Issued: May 2, 2014**  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 15, 2013 appellant filed a timely appeal from an August 21, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than 180 days elapsed from January 16, 2013, the date of the most recent merit decision, to the filing of this appeal and pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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).

**FACTUAL HISTORY**

On October 15, 2012 appellant, then a 54-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained arthritis of the foot and foot-

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

related deformities as a result of her federal employment. She first became aware of her condition and of its relationship to her employment on July 10, 2009. Appellant first reported her condition to a supervisor on October 15, 2012.

In a letter dated July 25, 2012, Dr. Laurence G. Rubin, a podiatrist, diagnosed appellant with arthritis of both feet. He stated that weight bearing and walking aggravated her condition and noted that her job required both activities. Dr. Rubin reported that appellant was undergoing conservative treatment. Appellant also submitted several illegible medical forms dated from October 12, 2009 through July 25, 2012.

By letter dated November 26, 2012, OWCP requested additional medical evidence from appellant. It indicated that she had not submitted sufficient medical evidence in support of her claim, because it was illegible and did not contain a physician's diagnosis or opinion as to how her employment activities caused, contributed to or aggravated her condition. OWCP afforded appellant 30 days to submit additional evidence. Appellant did not respond.

By decision dated January 16, 2013, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence containing a rationalized opinion from a physician on the issue of causal relationship. OWCP noted that the medical report from Dr. Rubin diagnosed arthritis, but did not contain a basis for his opinion on causal relationship based on the nature of her work and her medical history.

By letter dated August 13, 2013, appellant requested reconsideration of OWCP's January 16, 2013 decision. She stated that she enclosed a letter from Dr. Rubin with her request, together with photographs and x-rays from 2009 and 2013. Appellant noted that she had worked for the postal service for 23 years and that her condition resulted from standing on concrete floors and driving for five to six hours a day for five days a week. OWCP received x-rays of her feet and photographs on August 16, 2013, but the letter from Dr. Rubin does not appear in the case record.

By decision dated August 21, 2013, OWCP declined appellant's request for reconsideration. It noted that the statement from Dr. Rubin had not been included with her request and that she had not submitted new and relevant evidence. OWCP informed appellant that any future request for reconsideration must be made within one year from the prior decision and accompanied by new and relevant evidence or legal contentions not previously considered.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), 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>2</sup> Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three

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

requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>3</sup>

The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

### ANALYSIS

OWCP issued a January 16, 2013 decision denying appellant's claim for compensation. On August 13, 2013 appellant requested reconsideration of this decision.

The Board does not have jurisdiction over the merits of the January 16, 2013 decision. 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 the claim. In her August 13, 2013 request for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered. 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)(2).

The relevant issue in this case is whether appellant submitted sufficient medical evidence to establish that her condition was causally related to duties of her federal employment. A claimant may be entitled to a merit review by submitting new and relevant evidence, however, appellant did not do so in this case. Appellant submitted photographs of her feet and x-rays together with her request for reconsideration. However, while this evidence was not previously of record, it is irrelevant to the grounds upon which OWCP denied her claim. Appellant's claim was denied because the medical evidence lacked a rationalized opinion from a physician, with a physiological description of how her claimed injury resulted from duties of her employment and a full and accurate factual and medical history, on the issue of causal relationship. As the photographs and x-rays do not contain such an opinion, they were not relevant and insufficient to require a merit review of her claim.

Appellant claims that she also attached a letter from Dr. Rubin to her request for reconsideration; but such material was not received by OWCP before its August 21, 2013 denial of reconsideration. If a claimant fails to submit relevant evidence not previously of record or

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

<sup>4</sup> *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

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

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

advance legal contentions of facts not previously considered, OWCP has the discretion to refuse to reopen a case for further consideration of the merits.<sup>7</sup>

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She 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.

The Board notes that appellant submitted evidence after the issuance of the August 21, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>8</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 21, 2013 is affirmed.

Issued: May 2, 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

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<sup>7</sup> *Pamela I. Holmes*, 49 ECAB 581, 586 (1998).

<sup>8</sup> 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to OWCP with a request for reconsideration.