

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Guntersville, AL, Employer**

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**Docket No. 14-1515
Issued: November 13, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 24, 2014 appellant filed a timely application for review from a March 27, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than 180 days elapsed from September 6, 2013, the date of the most recent merit decision, to the filing of this appeal, 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 for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 19, 2013 appellant, then a 44-year-old sales, services and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that, on July 9, 2013, she was exposed to an unknown substance on parcels being distributed, resulting in a head or skull injury. A supervisor checked a box indicating that appellant was not injured in the performance of duty. Her knowledge of the incident did not agree with appellant's statements, noting that no substance was tested or found to be hazardous.

In a diagnostic report dated July 9, 2013, Dr. Lisa G. Driskill, a Board-certified radiologist, examined the results of a chest x-ray. She noted that the reason for the x-ray was shortness of breath. On examination of the x-ray, Dr. Driskill found that appellant's lungs were clear with no infiltrates and that the cardiac silhouette and mediastinum were normal. She stated her impression of no acute process.

By letter dated July 26, 2013, the employing establishment challenged appellant's claim. It explained that she alleged an unknown substance on the parcels she distributed caused a headache. The postal inspectors reported that the Guntersville Fire HAZMAT screened the substance using a HAZMAT ID and that it was determined to be nonhazardous. The employing establishment further noted that appellant had not submitted any medical evidence.

In an e-mail dated July 26, 2013, Tony Robinson, a postal inspector replied to a request from the employing establishment's Health and Resource Management office for a report confirming that the substance on parcels on July 9, 2013 was nontoxic. He replied:

“There is n[o]t a report that we release[d] that I know of. It was determined to be nontoxic. [The employing establishment] usually do n[o]t release the actual substance, but in this instance [the] USPS public information officer had released erroneous information conclusively identifying the substance as methanol which generated panic due to contaminated parcels being slated for delivery. None of the sampling made any significant correlation to actually identify the substance as being methanol. Inspector J. Morgan found the leaking package. The substance found leaking is a nontoxic lubricant made for topical use.”

On August 1, 2013 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It noted that she had not established that she actually experienced the incident alleged to cause injury or provided a diagnosis of any medical condition resulting from her alleged injury. OWCP afforded appellant 30 days to submit additional evidence.

Appellant submitted an emergency department report dated July 9, 2013, which was signed by several registered nurses. She also submitted a note, signed by a registered nurse advising that appellant did not work on July 9, 2013 and discharge orders.

In a lab order sheet dated July 9, 2013, Dr. Victor L. Sparks, Board-certified in family medicine, ordered several diagnostic tests, including a test titled “(serum methanol) (Blood).” The results of this test were not submitted to the case record.

In a report dated July 9, 2013, Dr. Sparks noted that appellant arrived with a chief complaint of headache, which started just prior to arrival after exposure to a clear oily substance at work. He stated that she had been exposed for only a few minutes in a room without direct contact between the substance and her clothing or body parts. Dr. Sparks noted that the substance had been identified as methanol by an investigator for the employing establishment. He stated his impression of methanol exposure, headache and nausea. Dr. Sparks prescribed appellant Zofran for nausea, acetaminophen and Motrin.

In a 911 response report dated July 9, 2013, an emergency medical technician noted that he had arrived on the scene to find appellant sitting outside. Appellant stated that the chemical did not touch her, but that she was in the room when it was exposed.

On August 8, 2013 appellant stated that, on the morning of July 9, 2013, she was sorting mail at the employing establishment when she came across small packages inside the tubs of mail, carried them to the parcel breakdown area and sorted them into carrier hampers. She was in the immediate area for approximately eight minutes when a chemical, later identified as methanol, leaked on 15 packages. Appellant went to the flat case and found a parcel sack on top of a garbage can. She picked it up, not knowing that it was a sack with the chemical spilled on it. Appellant stated that the chemical got on her hands and clothing. Once she exited the building, her mouth and tongue were tingling, she had a headache and she began to feel nauseated, sleepy, confused, disoriented and giddy. Appellant was taken by ambulance to a hospital, where she was treated. After being discharged, she was unable to drive and had headache and nausea for the rest of the evening. Appellant stated that, for the following five to seven days, she had confusion, stomach cramps and difficulty staying focused.

By letter dated August 21, 2013, Dr. Sparks stated that appellant had been seen on July 9, 2013 after being exposed to an unknown substance while at work at the employing establishment. The substance was described as clear and oily, with primary exposure on the hands as well as an odd taste in the mouth and subsequent headache. Dr. Sparks stated that it had been brought to his attention that OWCP did not wish to pay for the emergency room visits. At the time of the incident, the employing establishment was shut down, investigators were sent and the substance was identified by the emergency medical technicians as containing methanol. Dr. Sparks stated that it was later determined to have been K-Y Gel substance with an additive that apparently gave appellant and other coworkers their symptoms. He noted that he had been approached by employees of the employing establishment to further clarify their medical records in order that they were not billed personally. Dr. Sparks stated that he felt that the medical record “stands for itself relative to the causal relationship of the unknown exposure and [appellant’s] subsequent symptoms and the need for further workup as indicated with the unknown substance at that time.”

By decision dated September 6, 2013, OWCP denied appellant’s claim. It found that she had not established a diagnosis in connection with the incident of July 9, 2013. OWCP noted that the medical evidence contained a diagnoses of methanol exposure, headache and nausea. It noted that both headache and nausea were symptoms, not definitive diagnoses. Further, that methanol exposure was not a diagnosis because it only denoted the substance to which appellant was exposed.

By form dated March 11, 2014, received by OWCP on March 21, 2014, appellant requested reconsideration of OWCP's September 6, 2013 decision. With her request, she attached a narrative statement. Appellant related that her office was evacuated after two coworkers and herself were exposed to methanol from a leaking package and that they soon experienced headache, tingling/numbing of the tongue, nausea, disorientation, giddiness, blurred vision, dizziness and stomach cramps. She contended that tests of the chemical by the hazard team of the local fire department, the hospital emergency room staff and the postal inspectors determined that the substance was methanol. Appellant explained that she was at work sorting mail and exposed to a leaking package containing methanol. She stated that she had documents from her physician, the emergency room, fire department and police officials. Appellant did not submit these documents to OWCP. She contended that she had the damaged package with the chemical in it, sealed in an airtight container. Appellant also submitted a hazard summary from the Environmental Protection Agency's web site explaining what methanol is, its uses, its sources and potential exposures and health hazard information.²

By decision dated March 27, 2014, OWCP declined appellant's request for reconsideration without reviewing the merits of the case. It found that her request did not raise any substantive legal questions or include new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), 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.³ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three 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.⁴

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁵ 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.⁶ While the reopening of a case may be predicated solely on a legal premise not previously

² 20 C.F.R. § 10.303(b) states that employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services where simple exposure to a workplace hazard has occurred, including an identifiable event such as a spill, leak or explosion.

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

⁴ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁵ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁶ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁷

ANALYSIS

OWCP issued a September 6, 2013 decision denying appellant's claim for compensation. By form dated March 11, 2014, received by OWCP on March 21, 2014, appellant requested reconsideration of this decision.

As noted, the Board does not have jurisdiction over the merits of the September 6, 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 March 11, 2014 request for reconsideration, appellant 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. Her legal argument consisted of her contention that her claim was established based on the evidence of record. This argument was not new. The elements of appellant's claim had already been considered upon the initial adjudication of September 6, 2013. 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 underlying issue in this case is whether appellant submitted sufficient medical evidence to establish an injury related to the traumatic incident of July 9, 2013. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. With her request, appellant submitted a statement and a description of methanol from the web site of the Environmental Protection Agency.⁸ While these documents were not previously of record, they are irrelevant to the grounds upon which OWCP denied her claim. Appellant's claim was denied because it lacked a firm medical diagnosis from a physician related to the incident of July 9, 2013. Neither her statement nor the description of methanol provided a diagnosis from a physician with an opinion in causal relation. As such, these documents were not relevant and insufficient to require a merit review of her claim.

The Board accordingly 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 review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

⁸ Appellant stated that she had relevant documents from her physician, the emergency room, fire department and police officials, but they were not in the record.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2014 is affirmed.

Issued: November 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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