

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

R.P., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Alexandria, VA, Employer**

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**Docket No. 14-1162
Issued: October 10, 2014**

Appearances:

*Molly J. Durso, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2014 appellant, through counsel, filed a timely appeal from a March 12, 2014 decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's request for reconsideration. Since more than 180 days have elapsed from the last merit decision of July 15, 2011 and 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 only has jurisdiction over the nonmerit decision.

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).

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant's counsel contends that OWCP improperly found that the report by appellant's physician was cumulative evidence, and that this report was sufficient to require merit review of appellant's case.

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decision are hereby incorporated by reference.²

In a May 13, 2010 decision, OWCP terminated appellant's benefits, finding that she no longer had any disability or residuals due to her accepted work condition. This decision was upheld by the hearing representative on December 1, 2010. Appellant subsequently requested reconsideration and submitted an April 6, 2011 report by Dr. John R. Chase, appellant's treating Board-certified orthopedic surgeon, who noted that he initially saw appellant in April 2007 with regard to her employment injury, that she underwent arthroscopic surgery in her left knee in December 2007, that she had an extraordinarily long and protracted postoperative recovery and that afterward her right knee became symptomatic. He opined that appellant still had some difficulty related to the residual tear of the meniscus in her right knee and needed treatment based upon the level of her symptoms. On July 15, 2011 OWCP conducted a merit review, but denied modification of its prior decision. OWCP noted that although Dr. Chase opined that appellant continued to have problems related to the residual tear of the meniscus in her right knee, Dr. Chase's opinion was not based on current objective findings.

In support of her subsequent requests for reconsideration, appellant submitted a June 4, 2012 report wherein Dr. Chase indicated that his opinion had not changed, that appellant had underlying degenerative arthritis and a degenerative meniscal tear. Dr. Chase noted that appellant's chances of benefitting from arthroscopic surgery on her right knee were quite small. He opined that the difficulty appellant had at that time has not changed from when he saw her initially in 2007. OWCP denied appellant's requests for reconsideration in decisions dated January 15 and April 10, 2013, finding that they were not timely filed and failed to demonstrate clear evidence of error. However, the Board found the requests timely and remanded the case for OWCP to apply the correct standard.³

By decision dated March 12, 2014, OWCP denied appellant's requests for reconsideration. It applied the standard for timely reconsideration requests, but determined that the evidence presented by appellant was not sufficient to warrant merit review.

² Docket No. 13-1439 (issued December 19, 2013). On March 8, 2007 appellant, then a 41-year-old information management specialist, filed a traumatic injury claim alleging that, on February 20, 2007, while walking in the parking lot near the entrance of the employing establishment's building, she slipped and fell to the sidewalk and injured both knees, her wrist, lower back, right ribs and right arm. OWCP accepted appellant's claim for sprain of the lumbar region of back and bilateral knee medial meniscus tear.

³ *Id.*

LEGAL PRECEDENT

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

ANALYSIS

By decision dated May 13, 2010, OWCP terminated appellant's benefits. It found that she no longer had any disability or residuals causally related to her accepted employment injury. The most recent merit decision in this case is OWCP's July 15, 2011 decision denying modification. Thereafter, OWCP issued nonmerit decisions denying reconsideration on January 15 and April 10, 2013. However, the Board found those requests timely and remanded this case to OWCP to apply the proper standard for reconsideration.⁸ In this appeal, the jurisdiction is restricted to reviewing OWCP's decision denying reconsideration issued on March 12, 2014. The Board does not have jurisdiction over the merits of the claim.⁹

Appellant submitted a June 4, 2012 report from Dr. Chase, who stated that she was still having difficulty with her right knee. This report is duplicative of Dr. Chase's report of April 6, 2011, wherein he indicated that appellant had residuals to her right knee. The Board finds that Dr. Chase's report is cumulative of evidence previously submitted and adjudicated.¹⁰ It is well established that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹¹ Dr. Chase's 2012 report does not provide a basis to reopen appellant's claim for merit review as it is duplicative of his prior reports of record.¹² Therefore

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *See supra* note 2.

⁹ 20 C.F.R. § 501.3(e).

¹⁰ *T.S.*, Docket No. 14-255 (issued June 25, 2014).

¹¹ *Denis M. Dupor*, 51 ECAB 482 (2000). Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Howard A. Williams*, 45 ECAB 853 (1994).

¹² *See L.D.*, Docket No. 14-205 (issued April 7, 2014).

the medical evidence submitted with appellant's request for reconsideration is insufficient to reopen appellant's case for further merit 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.¹³

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2014 is affirmed.

Issued: October 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹³ See *L.H.*, 59 ECAB 253 (2007).