

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

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**A.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kansas City, MO, Employer**

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**Docket No. 15-451  
Issued: April 13, 2015**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 22, 2014 appellant, through counsel, filed a timely appeal of a November 20, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration. The most recent merit decision is a Board decision dated November 19, 2013, which became final after 30 days of issuance,<sup>1</sup> and is not subject to further review.<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction over the nonmerits of this case.

**ISSUE**

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

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<sup>1</sup> 20 C.F.R. § 501.7(a); *see R.M.*, Docket No. 14-1213 (issued October 15, 2014).

<sup>2</sup> *Id.* at § 501.6(d); *see R.M., id.*

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

### **FACTUAL HISTORY**

This case was previously before the Board.<sup>4</sup> On January 16, 2007 appellant, a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her head, neck, and back as a result of stepping out of a vehicle and slipping on ice. By decision dated April 7, 2011, OWCP accepted the claim for neck sprain. On March 31, 2011 appellant, through counsel, filed a claim for a recurrence of disability (Form CA-2a). In a December 9, 2011 decision, OWCP denied the recurrence claim on the basis that the medical evidence was insufficient to establish that appellant sustained a recurrence of her medical condition commencing March 30, 2011 causally related to the January 16, 2007 employment injury. By decision dated May 8, 2012, an OWCP hearing representative affirmed the December 9, 2011 decision. Appellant requested reconsideration. By decision dated April 19, 2013, OWCP denied modification of its prior decision. By decision dated November 19, 2013, the Board affirmed the April 19, 2013 OWCP merit decision which denied appellant's recurrence claim. The facts of the case, as set forth in the prior decision, are hereby incorporated by reference.

On December 11, 2013 appellant, through counsel, requested reconsideration and submitted an April 14, 2011 report from Dr. Harold Hess, a Board-certified neurosurgeon, who diagnosed cervical pain and opined that the condition was causally related to appellant's employment injury when she slipped at work in January 2007. Dr. Hess indicated that, if appellant's pain did not improve after a full course of conservative treatment, he would recommend further diagnostic testing, including a cervical myelogram followed by a computerized axial tomography (CAT) scan.

By decision dated January 9, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

On November 4, 2014 appellant, through counsel, requested reconsideration and submitted an October 24, 2014 report from Dr. Hess who indicated that his opinion remained the same as his last visit with appellant on February 14, 2013, which was that she was suffering from cervical discogenic pain and he recommended a cervical discogram of C3-7.

By decision dated November 20, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

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<sup>4</sup> Docket No. 13-1430 (issued November 19, 2013).

an award for or against compensation.<sup>5</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>6</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.<sup>7</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>8</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>9</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>10</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup>

### ANALYSIS

In support of her November 4, 2014 reconsideration request, appellant submitted an October 24, 2014 report from Dr. Hess who indicated that his opinion remained the same as his last visit with appellant on February 14, 2013, which was that she was suffering from cervical discogenic pain and he recommended further diagnostic testing. The Board finds that submission of this report did not require reopening appellant's case for merit review. As OWCP denied her claim based on the lack of supportive medical evidence and this report repeats evidence already in the case record, it is cumulative and does not constitute relevant and pertinent new evidence. Therefore, it is not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Because she only submitted cumulative evidence with her request for

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<sup>5</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the 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>6</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>7</sup> 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>8</sup> *Id.* at § 10.607(a).

<sup>9</sup> *Id.* at § 10.608(b).

<sup>10</sup> See *A.L.*, *supra* note 7. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>11</sup> *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.<sup>12</sup>

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds counsel's arguments are not substantiated.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *L.H.*, 59 ECAB 253 (2007).