

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Ypsilanti, MI, Employer**

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**Docket No. 15-1436  
Issued: December 4, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 19, 2015 appellant, through counsel, filed a timely appeal from a March 5, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last OWCP merit decision of May 17, 2013 to 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 lacks jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

This case has previously been before the Board. By decision dated December 11, 2013, the Board affirmed OWCP's May 17, 2013 denial of appellant's claim, finding that she had not

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

met her burden of proof to establish that her current right knee condition was causally related to her employment activities.<sup>2</sup>

On April 15, 2011 appellant, then a 30-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that her accepted right knee strain, sustained on December 8, 2008, which OWCP adjudicated under claim number xxxxxx347, was aggravated by her employment on March 1, 2011. The record indicates that she returned to work after her December 8, 2008 work injury and was medically released from all treatment on April 22, 2009. The record also indicates that appellant has undergone seven right knee surgical procedures, but the dates of these procedures, and whether they were authorized by OWCP, is unknown. Following her release from medical treatment on April 22, 2009 appellant had no further medical treatment until April 6, 2011, when she sought care due to right knee instability. She stopped work on April 6, 2011. The facts of the case, as set out in the Board's prior decision, are incorporated herein by reference.

Following the Board's December 11, 2013 decision, appellant, through counsel, requested reconsideration, which OWCP received on December 9, 2014. Appellant asserted that medical records and notes from Dr. Vasilios Moutzouros, a Board-certified orthopedic surgeon, dated November 25 and September 18, 2014 and an October 6, 2014 magnetic resonance imaging (MRI) scan report established causation and documented her inability to work. She also submitted a separate letter requesting reconsideration, which OWCP received on December 11, 2014.

New evidence received by OWCP in support of the reconsideration request consisted of appellant's December 11, 2014 statement, a copy of an October 6, 2014 MRI scan right knee joint, and progress notes by Dr. Moutzouros dated September 21 and November 27, 2014. In his reports, Dr. Moutzouros noted that appellant was status post right knee surgery. In his September 21, 2014 report, he recommended activity modification with limited hours walking a route. In a November 27, 2014 report, Dr. Moutzouros reported that appellant was out of work for a different issue. He advised that she had improved with the avoidance of her route and has had no pain since she had been resting her leg for a few weeks without the requirement of walking her route.

OWCP also received copies of evidence previously of record including May 5 and 9, 2011 statements from appellant requesting light duty and the employing establishment's May 6, 2011 response; reports from Dr. Moutzouros dated August 31, 2011, January 16, 2012, and April 12, 2013; and a May 16, 2011 report from Dr. Kishor Patel, a Board-certified internist.

By decision dated March 15, 2015, OWCP denied reconsideration of its December 11, 2013 decision without reviewing the merits of the case.

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<sup>2</sup> Docket No. 13-1513 (issued December 11, 2013).

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</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>4</sup>

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.<sup>5</sup> However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board.<sup>6</sup>

If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

## ANALYSIS

On December 9 and 11, 2014 OWCP received appellant's requests for reconsideration. To be entitled to a merit review of OWCP's decision denying or terminating a benefit, her application for review must be received within one year of the date of that decision.<sup>8</sup> The Board has held, however, that OWCP's procedures<sup>9</sup> should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.<sup>10</sup> As the Board's December 11, 2013 decision was the last merit decision of record and the requests for reconsideration were received within one-calendar year of that decision, appellant's request was therefore timely. The question for determination is whether her request met at least one of the three standards for obtaining a merit review of her case.

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<sup>3</sup> 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>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *D.G.*, 59 ECAB 455 (2008); *see also C.J.*, Docket No. 12-1570 (issued January 16, 2013).

<sup>7</sup> 20 C.F.R. § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *Id.* at § 10.607(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011).

<sup>10</sup> *See Mary E. Schipske*, 43 ECAB 318 (1991); *see also John W. O'Connor*, 42 ECAB 797 (1991).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, and submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated December 11, 2013, the Board found that appellant had not met her burden of proof to establish that her right knee condition and subsequent surgery were causally related to her employment activities. On December 9 and 11, 2014 OWCP received her request for reconsideration. Appellant submitted numerous duplicative medical evidence and numerous copies of evidence previously considered. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>11</sup>

The underlying issue is primarily medical in nature, whether appellant established causal relationship of her right knee condition to her employment activities. However, the Board finds that she did not provide any relevant or pertinent new evidence to the issue of whether her right knee condition was related to the accepted work activities. In this regard, the statements from appellant are irrelevant to the underlying medical issue of causal relationship and are insufficient to reopen her case for a merit review.<sup>12</sup>

Additionally, in his reports of September 21 and November 27, 2014, Dr. Moutzouros noted that appellant was status post right knee surgery and recommended activity modification of limited hours walking. In his November 27, 2014 report, he indicated that she was out of work for a different issue. Dr. Moutzouros reported that appellant's knee condition had improved and she has had no pain since she has been resting her leg as she had not been doing her route for a few weeks. However, these reports are not relevant as they do not address how appellant's knee condition is causally related to her employment activity.

Similarly the new MRI scan report of October 6, 2014 did not address the issue of causal relationship. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>13</sup> Thus, these reports do not constitute pertinent new and relevant evidence and are thus insufficient to require OWCP to reopen appellant's case for further review of the merits.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3).

On appeal, appellant's counsel argues that OWCP's decision is contrary to law and fact. However, as previously noted, appellant's reconsideration request did not meet any of the requirements for reopening her case and OWCP properly denied a merit review. The Board will affirm OWCP's March 5, 2015 nonmerit decision.

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<sup>11</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

<sup>12</sup> *See Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>13</sup> *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board