

FACTUAL HISTORY

On February 5, 2013 appellant, then a 46-year-old industrial hygienist, filed a traumatic injury claim alleging that on February 4, 2012 she injured her back when, while transporting Girl Scout cookies with two shopping carts, she hit a fire lane pole. She alleged that this incident aggravated a prior employment-related injury from 2002.³ The employing establishment controverted the claim and alleged that the injury did not occur at work.

By decision dated March 18, 2013, OWCP denied appellant's claim. It found that, although she established that she filed a timely claim and that the evidence supported that the injury or event occurred as described, she had not submitted any medical evidence containing a medical diagnosis in connection with the event of February 4, 2012. OWCP further noted that, even if fact of injury had been established, appellant's case would still be denied as the evidence shows that she was not in the performance of duty when the accident of February 4, 2012 occurred. Finally, OWCP noted that, even if the claim were accepted, she would nevertheless not be entitled to continuation of pay as the claim was filed more than 30 days after the date of her claimed injury.

By letter dated June 30, 2013, appellant submitted a request for reconsideration. She argued that the claim was not a new injury but rather a reinjury of an injury that occurred on February 6, 2001. Appellant submitted e-mail correspondence with regard to her leave requests. She also resubmitted a copy of a claim for occupational disease she signed on October 16, 2012.

By decision dated September 13, 2013, OWCP denied reconsideration as it found that the evidence presented on reconsideration was not sufficient to warrant review of the March 18, 2013 decision.

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

³ OWCP No. xxxxxx683.

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).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

OWCP denied appellant's claim for compensation as she failed to establish a medical condition causally related to the incident of February 4, 2012. It also denied her claim because it found that she was not in the performance of duty at the time of the alleged incident. As previously noted, the Board does not have jurisdiction over the merits of the claim and may only address whether OWCP abused its discretion by declining to review the merits of appellant's claim.

The Board finds that appellant has not submitted evidence or argument sufficient to support her request for reconsideration. Her e-mails with regard to requesting leave are not relevant to the underlying decision on the claim. Appellant's claim was denied because she had failed to submit medical evidence to establish an injury causally related to the February 4, 2012 incident and because she had not established that she was in the performance of duty when the incident occurred. The evidence submitted on reconsideration did not address either of these relevant issues. As to the copy of the occupational disease claim, this is duplicative of the form already submitted and as such does not constitute relevant and pertinent new evidence not previously considered by OWCP.⁸

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.⁹

CONCLUSION

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

⁷ *Id.* at § 10.608(b).

⁸ *See A.M.*, Docket No. 14-125 (issued March 24, 2014).

⁹ *See L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 13, 2013 is affirmed.

Issued: February 19, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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