

ISSUE

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

FACTUAL HISTORY

On August 6, 2013 appellant, then a 66-year-old clerk and assistant filed a traumatic injury claim alleging that on that date, she was walking and tripped over the saddle of the threshold that was in the doorway. She indicated that she fell face first, skinned her knee, and her mouth hit the floor. Appellant indicated that her tooth was loosened and she hurt her back in the performance of duty. She stopped work on that date. The employing establishment checked the box "no" in response to whether appellant was in the performance of duty. It noted that she was entering the building for work.

By letter dated August 29, 2013, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

OWCP received a statement from appellant and a diagram describing the area and location of her fall. Appellant indicated that the fall occurred at 6:55 a.m.

By decision dated October 2, 2013, OWCP denied appellant's claim on the grounds that she failed to establish the medical component of fact of injury. It noted that they did not receive any medical evidence containing a diagnosis in connection with the work event.

On November 12, 2013 appellant requested reconsideration and submitted additional medical evidence. This included a November 5, 2013 duty status report from Dr. Brian Morelli, a Board-certified orthopedic surgeon, who diagnosed a spinal contusion and indicated that appellant could not work. In an attending physician's report of the same date, Dr. Morelli diagnosed spinal contusion and exacerbation of degenerative disease secondary to a fall. He checked a box yes to indicate that appellant's trip and fall at work caused her condition.

In a decision dated February 14, 2014, OWCP denied modification of the October 2, 2013 decision.

On March 24, 2014 OWCP received appellant's request for reconsideration. Appellant indicated that she was under the impression that if she fell at work during working hours and had a witness, her claim would be covered as she was in the performance of her duties. She noted that a security guard picked her up bleeding and a nurse helped her to a wheelchair.

Evidence submitted included copies of photographs of herself and a summary of answers from her traumatic injury claim form.³ Appellant resubmitted copies of Dr. Morelli's November 5, 2013 duty status and attending physician's reports. Also resubmitted was a January 13, 2014 letter from the employing establishment advising appellant that she had received an overpayment of salary due to a time and attendance adjustment.

³ The copies of photographs are only partially viewable due to poor image quality.

In a decision dated April 9, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

- “(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
- “(ii) Advances a relevant legal argument not previously considered by OWCP; or
- “(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

Section 10.608(b) of Title 20 of the Code of Federal Regulations provide that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

Appellant disagreed with the denial of her traumatic injury claim and timely requested reconsideration. The underlying issue on reconsideration is medical in nature, whether the August 6, 2013 work incident caused or contributed to an injury.

On reconsideration, appellant argued that she was under the impression that if she fell at work during working hours and had a witness, her claim would be covered as she was in the performance of her duties. She noted that a security guard picked her up bleeding and a nurse helped her to a wheelchair. The Board finds that the falling incident on August 6, 2013 is not in dispute. Rather, OWCP denied the claim because the medical evidence submitted did not contain medical opinion evidence explaining how her back, tooth, and knee conditions were caused or aggravated by specific factors of her employment. This argument by appellant does not show that OWCP made a legal error nor does it advance a relevant legal argument not previously considered by OWCP.

Furthermore, appellant did not submit new medical evidence addressing whether her employment contributed to her claimed condition. Although she resubmitted November 5, 2013

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b).

⁶ *Id.* at § 10.608(b).

medical reports from Dr. Morelli, the Board has held that 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.⁷ Likewise, resubmission of the January 13, 2014 letter from the employing establishment with regard to an overpayment is not relevant. The summary of answers from her traumatic injury claim form is essentially repetitive of information on her August 6, 2013 claim form and does not serve as a basis for reopening the claim. The copies of photographs, while new, are not relevant to the underlying medical issue. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

Appellant therefore 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 constitute new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

On appeal, appellant submitted new medical evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.⁹

CONCLUSION

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

⁷ *James W. Scott*, 55 ECAB 606 (2004).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2015
Washington, DC

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

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

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