

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

V.V., Appellant

and

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

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**Docket No. 15-352
Issued: March 20, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2014 appellant filed a timely appeal from an October 3, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from the last merit decision dated November 26, 2013 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 53-year-old mail clerk, filed a Form CA-2 claim for benefits based on an occupational condition on September 18, 2013, alleging that she developed lumbar, left leg, and

¹ 5 U.S.C. § 8101 *et seq.*

bilateral shoulder conditions causally related to employment factors. She stated that on October 29, 2012 she realized that she sustained an injury caused or aggravated by her employment. Appellant explained that on April 10, 2013 her left leg gave out due to the earlier injury and caused her to fall down stairs. The employing establishment controverted the claim. It stated that appellant had previously filed claims when she fell down the stairs on October 29, 2012 and in April 2013 and that this claim was essentially duplicative of those claims.²

By letter dated October 2, 2013, OWCP informed appellant that it required additional medical evidence in support of her claim. It requested that she submit the additional evidence within 30 days.

Appellant submitted several progress reports dated June 28, August 9, September 19, and October 17, 2013 from Dr. Marvin Bleiberg, a specialist in pain medicine. In these reports Dr. Bleiberg listed appellant's complaints of left foot pain, left leg pain, bilateral shoulder pain, and lower back pain and diagnosed lumbar radiculopathy, left shoulder impingement, and noted that she had been prescribed medications for her conditions. He advised that she had sustained work injuries on October 29, 2012 and April 4, 2013. Dr. Bleiberg stated that he had a long counseling and discussion session with appellant, in which he discussed the diagnosis, possible treatment options, and the prognosis, as well as the risks and benefits of the potential treatment options. He did not present an opinion as to whether appellant's diagnosed conditions were causally related to employment factors.

By decision dated November 26, 2013, OWCP denied the claim, finding that appellant failed to submit sufficient medical evidence to establish that her claimed conditions were causally related to employment factors.

In reports dated November 11 and December 9, 2013, Dr. Bleiberg essentially reiterated his previous findings and conclusions. He diagnosed lumbar strain/sprain in addition to appellant's other conditions, but did not attribute this condition to work factors.

On June 5, 2014 appellant requested reconsideration of the November 26, 2013 decision.

By decision dated October 3, 2014, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.³ Evidence that repeats or duplicates

² It is unclear from the record as to whether appellant had previously accepted claims pertaining to the alleged dates of injury.

³ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP.

In the present appeal, appellant submitted the November 11 and December 9, 2013 reports from Dr. Bleiberg. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ The evidence appellant submitted in connection with her June 5, 2014 reconsideration request is not pertinent to the issue on appeal; *i.e.*, whether she submitted sufficient medical evidence to establish that her lumbar, left leg and bilateral shoulder conditions were sustained in the performance of duty. The reports from Dr. Bleiberg merely reiterate findings and conclusions he made in his previous reports; these are therefore cumulative and duplicative.⁶ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. It is therefore concluded that OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its October 4, 2014 decision.

CONCLUSION

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

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

⁶ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 20, 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