

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

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C.S., Appellant )

and )

U.S. POSTAL SERVICE, OAKLAND )  
PERFORMANCE & DISTRIBUTION CENTER, )  
Oakland, CA, Employer )

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**Docket No. 15-1488**  
**Issued: November 24, 2015**

*Appearances:*

Hank Royal, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 30, 2015 appellant, through her representative, filed a timely appeal from a January 30, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last OWCP merit decision of February 4, 2014 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 case.

**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**

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

On June 26, 2012 appellant, then a 33-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 2012 at 10:20 p.m. she injured her thumb and wrist while pushing a pie-cart which did not move because of a broken wheel. She noted that her thumb popped and she felt electricity through her hand. Appellant stated that she informed Supervisor Garrett Oliver of the injury and went to the hospital. The employing establishment controverted the claim, noting that the evidence caused them to believe she planned and set up the injury.

OWCP developed the claim by requesting additional factual and medical evidence from appellant and additional evidence from the employing establishment regarding the challenge of her claim. Both appellant and the employing establishment submitted additional evidence.

By decision dated August 13, 2012, OWCP denied appellant's claim as fact of injury was not established. It determined that the evidence was not sufficient to establish that the claimed employment incident occurred as described. This was based on timekeeping records, an investigation report from the postal inspector general, and sworn statements from coworkers and supervisors, which refuted appellant's statements.<sup>2</sup>

On September 11, 2012 appellant requested an oral hearing before an OWCP's Branch of Hearings and Review. A hearing was scheduled for December 12, 2012, but appellant did not attend. A review of the written record was subsequently conducted by an OWCP hearing representative. OWCP's Branch of Hearings and Review requested that appellant and the employing establishment submit additional evidence or arguments. By decision dated February 13, 2013, OWCP's hearing representative affirmed OWCP's August 13, 2012 decision.

On June 7, 2013 OWCP received appellant's May 31, 2013 request for reconsideration along with additional evidence. By decision dated February 4, 2014, it denied modification of its prior decision. OWCP noted that the evidence on file cast serious doubt about whether the June 25, 2012 injury occurred.

On December 29, 2014 OWCP received appellant's December 22, 2014 request for reconsideration. Appellant's representative argued that the Board's August 5, 2014 decision, pertaining to the August 19, 2012 claim, contained new legal information which was supportive of the current claim. No new evidence was submitted.

By decision dated January 30, 2015, OWCP denied reconsideration of the February 4, 2014 decision without reviewing the merits of the case.

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<sup>2</sup> On December 2, 2012 appellant filed a separate traumatic injury claim under a different OWCP file number alleging that on August 19, 2012 she injured her right thumb and wrist while pushing a pie-cart which did not move because of a broken wheel. OWCP initially denied that claim on March 13, 2013. Appellant requested a hearing before the Branch of Hearings and Review. By decision dated September 13, 2013, an OWCP hearing representative affirmed the denial of the claim. By decision dated August 5, 2014, the Board set aside OWCP's September 13, 2013 decision and remanded the case. The Board found that the weight of the factual evidence established that the incident of August 19, 2012 occurred as alleged and remanded the case for a determination of whether the medical opinion evidence established that the employment incident caused an injury. Docket No. 14-704 (issued August 5, 2014).

## 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

OWCP received appellant's December 22, 2014 reconsideration request on December 29, 2014, which is within one year of the last merit decision dated February 4, 2014. Appellant's reconsideration 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.

By decision dated February 4, 2014, OWCP affirmed the denial of appellant's June 25, 2012 injury claim on the basis that the evidence of record was insufficient to establish that the event occurred as alleged. The decision noted that the record was not consistent with appellant's version of events and the medical evidence of June 26, 2012 did not contain references to the alleged June 25, 2012 injury.

In appellant's reconsideration request, her representative noted that the Board issued an August 5, 2014 decision, Docket No. 14-704, pertaining to appellant's August 19, 2012 injury claim and that the Board decision contained new legal information which was supportive of the present claim. However, this information is irrelevant as the Board's August 5, 2014 decision in the other claim has no bearing on the present claim. Appellant's representative did not explain

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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).

how legal argument presented in the Board's August 5, 2014 decision was relevant to the present claim. Thus, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP.

Appellant also has not submitted relevant and pertinent new evidence not previously considered by OWCP. It is noted that the instant claim was for an injury which allegedly occurred approximately two months prior to the date of injury in appellant's August 19, 2012 injury claim. Appellant's reconsideration request nor the Board's decision in the other claim addressed the issue of whether appellant established fact of injury regarding the June 25, 2012 alleged employment incident. The Board's findings regarding the August 19, 2012 injury are irrelevant, immaterial, and have no bearing on the issue in the current claim. The Board therefore finds that the arguments and evidence submitted to support appellant's reconsideration request do not constitute relevant and pertinent new evidence.

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP and she did not submit relevant and pertinent new evidence not previously considered by OWCP.

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening her case, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's January 30, 2015 nonmerit decision.

**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 January 30, 2015 decision of the Office of Workers Compensation Programs is affirmed.

Issued: November 24, 2015  
Washington, DC

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

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

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