

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

D.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Dublin, GA, Employer**

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**Docket No. 15-1625
Issued: November 9, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 27, 2015 appellant, through counsel, filed a timely appeal from a February 23, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a November 3, 2014 decision of the Board, which became final after 30 days of issuance¹ and is not subject to further review.² As more than 180 days elapsed from the last merit decision, dated November 3, 2014, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

¹ 20 C.F.R. § 501.7(a); *see A.K.*, Docket No. 15-0451 (issued April 13, 2015).

² *Id.* at § 501.6(d).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. By decision dated November 3, 2014, the Board affirmed as modified a January 6, 2014 OWCP decision denying appellant's claim that she sustained an injury on June 14, 2013 in the performance of duty.⁴ The Board found that the evidence supported that a patient struck her on June 14, 2013 as alleged. The Board determined, however, that the medical evidence was insufficient to establish that appellant sustained a medical condition as a result of the accepted employment incident. The facts and the circumstances as set forth in the prior decision of the Board are incorporated herein by reference.

On February 13, 2015 appellant, through counsel, requested reconsideration. In support of the reconsideration request, she submitted a February 3, 2015 report from Dr. David L. Tate, Board-certified in family practice. Dr. Tate related that he began treating appellant on August 27, 2013. He noted, "It is my position at this time that my medical records speak for themselves. Any additional opinion or speculation at this time would be difficult or even impossible to offer given the time lapse."

By decision dated February 23, 2015, OWCP denied appellant's request for reconsideration as she did not submit evidence or raise an argument sufficient to warrant reopening her case for further merit review. It found that Dr. Tate's report was cumulative in nature and thus did not constitute new and relevant medical evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that 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.⁶ 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.⁷ When a claimant fails to meet one of the above standards, OWCP

⁴ Docket No. 14-0924 (issued November 3, 2014). On June 20, 2013 appellant, then a 54-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 14, 2013 she injured her neck, right upper back, right shoulder, and right arm when a patient struck her repeatedly on the left side of her neck and shoulder. She stopped work on August 14, 2013.

⁵ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[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."

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹¹

ANALYSIS

In the most recent merit decision dated November 3, 2014, the Board found that appellant had established the occurrence of the June 14, 2013 employment incident, but that there was an absence of rationalized medical evidence to show that she sustained a diagnosed condition causally related to the accepted work incident. On February 13, 2015 appellant, through counsel, requested reconsideration. Her request is timely because it was received by OWCP within one year of the November 3, 2014 decision. The question for determination is whether appellant's request for reconsideration meets at least one of the three standards for obtaining merit review.

In her reconsideration request, appellant did not demonstrate that OWCP erroneously applied or interpreted a specific point of law or raise a legal argument not previously considered. She further did not provide any pertinent new and relevant evidence. Appellant submitted a February 3, 2015 report from Dr. Tate. Dr. Tate advised that he could not add anything to his prior medical reports due to the length of time that had passed. He indicated that the medical records "speak for themselves." The Board finds that Dr. Tate's February 3, 2015 report does not require reopening of appellant's case for merit review. The underlying issue in this case is whether the medical evidence establishes that appellant sustained an injury on June 14, 2013 in the performance of duty. Dr. Tate did not address this issue, but instead referred only to his prior reports which were already considered. His February 3, 2015 report is thus cumulative in nature. It is well established that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹²

Appellant's reconsideration request 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 provide relevant and pertinent new evidence not previously considered by OWCP. Because her reconsideration request did not meet any of the standards for reopening her case, the

⁸ *Id.* at § 10.608(b).

⁹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹⁰ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹² *See R.P.*, Docket No. 14-1162 (issued October 10, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

Board finds that OWCP properly denied her request for further merit review under section 8128(a).

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further merit review under section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2015
Washington, DC

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

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

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