

FACTUAL HISTORY

OWCP accepted that on June 3, 2010 appellant, then a 34-year-old clerk, sustained a right knee contusion when she attempted to move a tray that was stuck on the tray line. Appellant stopped work that day and OWCP paid compensation benefits. OWCP terminated her compensation benefits by decision dated March 28, 2012. Appellant's counsel requested reconsideration and submitted a March 20, 2013 brief, as well as a November 11, 2012 report from Dr. Neofitos Stefanides, an orthopedic surgeon. By decision dated May 29, 2013, OWCP denied modification of the March 28, 2012 termination decision and found that appellant had not established disability after March 28, 2012, causally related to the June 3, 2010 employment injury.

This case has previously been before the Board. By decision dated April 9, 2014, the Board affirmed OWCP's May 29, 2013 decision.² Therein, the Board reviewed the arguments appellant's counsel presented in his March 20, 2013 brief. In the March 20, 2013 brief, counsel argued that the report of Dr. Stefanides dated November 11, 2012 established that appellant had residuals of the accepted injury and that OWCP had failed to accept all of the conditions appellant sustained as a result of the work injury. The Board found that OWCP properly relied on the February 7, 2012 opinion of Dr. Norman Sveilich, a Board-certified orthopedic surgeon selected as the impartial medical specialist, who determined that appellant had no work-related residuals or disability for full-time employment due to her accepted right knee contusion. The Board further found that none of the medical reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury.³

On November 18, 2014 OWCP received appellant's counsel's November 18, 2014 request for reconsideration. This request for reconsideration presented arguments which were identical to the arguments raised by counsel in his March 20, 2013 brief. Counsel argued that reconsideration was requested because medical and legal arguments were not previously considered or not properly considered by OWCP. Issues presented were: (1) whether OWCP accepted all conditions sustained by appellant as a result of the June 3, 2010 employment incident; and (2) whether OWCP properly terminated benefits. With regard to the first issue, counsel contended that the medical evidence of record demonstrated that because of the work-related incident of June 3, 2010, appellant sustained injuries and conditions in addition to those accepted by OWCP including consequential left knee injuries and conditions in the November 11, 2012 report of Dr. Stefanides, an orthopedic surgeon, previously of record, was submitted in support of this assertion. With regard to the second issue, counsel relying upon Dr. Stefanides' November 11, 2012 report, argued that OWCP improperly terminated compensation benefits as appellant continued to be disabled due to the June 3, 2010 employment-related injury. He also argued that the opinions of OWCP's second opinion physician, Dr. Leon Sultan, a Board-certified orthopedic surgeon, and Dr. Sveilich were based

² Docket No. 14-120 (issued April 9, 2014).

³ The Board indicated that, although the records contained evidence of a left knee condition and a back condition, appellant had not provided rationalized medical evidence explaining how the employment injury of June 3, 2010 caused the diagnosed conditions.

upon an inaccurate summary of the conditions appellant sustained causally related to the June 3, 2010 employment injury. No additional evidence was submitted.

By decision dated December 1, 2014, OWCP denied reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP 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's application for review must be received within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

On November 18, 2014 OWCP received appellant's request for reconsideration. To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁸ As the Board's April 9, 2014 decision was the last merit decision of record and the November 18, 2014 request for reconsideration was within one-calendar year of that decision, appellant's 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.⁹

In his November 18, 2014 request for reconsideration, appellant counsel did not establish that OWCP erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by OWCP and he did not submit relevant and pertinent new evidence not previously considered by OWCP. The Board therefore concludes that OWCP properly denied his request for merit review.

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *Id.* at § 10.607(a).

⁹ The Board has held, however, that OWCP's procedures should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.

Counsel continues to assert that the issues are whether OWCP met its burden of proof to terminate compensation after March 28, 2012, and whether appellant has other medical conditions causally related to the June 3, 2010 employment injury, but these issues were previously decided. The Board settled this matter in its April 9, 2014 decision when it found that the weight of the medical evidence established that appellant no longer suffered from the accepted right knee contusion she sustained on June 3, 2010, and she had not established continuing employment-related disability. These matters have been adjudicated. Decisions and orders of the Board are final as to the subject matter appealed.¹⁰

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence or argument. Appellant did not do so in this case. Counsel merely reiterated arguments and evidence previously considered. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

¹⁰ 20 C.F.R. § 501.6(a).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2015
Washington, DC

Christopher J. Godfrey, 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