

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

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**P.H., Appellant**

**and**

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

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**Docket No. 15-1383  
Issued: October 5, 2015**

*Appearances:*  
*Appellant, pro se*  
*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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 9, 2015 appellant filed a timely appeal from a May 7, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP dated November 5, 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 to review 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).

On appeal, appellant contends that she is entitled to 100 percent of her continuation of pay (COP) because her supervisor removed her from her assignment, made a false allegation against her, and delayed signing necessary documents for her compensation. She further argues

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

that as a consequence of being sent home by her supervisor because she was not wearing the proper boot, the union filed a grievance against her supervisor.

### **FACTUAL HISTORY**

On August 20, 2013 appellant, then 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sprained her left foot and scarred her right leg when her foot got caught under a bulk mail carrier that she was pushing at work on that date. She stopped work on the date of injury.

Appellant submitted the employing establishment's September 3, 2013 modified-duty job offer which she had accepted on the same day.

In an undated attending physician's report (Form CA-20), Dorian J. Tennant, a physician assistant, provided a history of the August 20, 2013 employment incident.<sup>2</sup> He reported examination findings and indicated with a checkmark that appellant's diagnosed left foot fracture/crush injury was caused or aggravated by an employment activity. Mr. Tennant stated that she was partially disabled commencing August 20, 2013 for an unknown period.

On October 9, 2013 appellant returned to full-time work at the employing establishment.

By letter dated April 11, 2014, OWCP accepted appellant's claim for a crushing injury of the left foot.

On July 28 and September 7, 2014 appellant filed several claims for compensation (Form CA-7) for leave without pay (LWOP), 18 hours of overtime pay, and night differential pay from August 10, 2013 to August 8, 2014. On time analysis forms (Form CA-7a) dated July 28 and September 7 and 10, 2014, she indicated that the 1,064 hours of LWOP claimed during the stated period were for the treatment she received from a Concentra medical specialist for her accepted crushing injury of the left foot and a traumatic retriggering of her accepted left foot injury.

Appellant submitted a June 5, 2014 Family and Medical Leave Act (FMLA) form completed by Dr. Joyce Patouhas, an attending podiatrist, who reported that appellant's condition commenced on August 20, 2013 and continued through the present. Dr. Patouhas provided a history of appellant's medical treatment and work restrictions. She stated that appellant's period of incapacity commenced on March 28, 2014 and that the end date for this period was unknown. Dr. Patouhas advised that she was unable to work until her back and left foot pain were at a manageable level. Appellant's pain was consistent and flare-ups could not be predicted. Dr. Patouhas diagnosed peripheral autonomic neuropathy, left foot pain, difficulty with walking, and a crushing foot injury. In an August 12, 2014 medical report, she noted appellant's complaint of left foot and back pain. Dr. Patouhas provided findings on examination and reiterated her diagnoses of peripheral autonomic neuropathy, pain, difficulty walking, and a crush foot injury. She advised that appellant could not work on her feet for a prolonged period

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<sup>2</sup> The Board notes that the record contains a Form CA-20 report signed by Mr. Tennant on September 11, 2013 that is identical to his undated Form CA-20 report.

of time. In a fax cover sheet dated August 12, 2014, Dr. Patouhas stated that appellant was expected to return to work on September 15, 2014.

By letter dated September 15, 2014, OWCP informed appellant that the evidence indicated that a light/limited-duty assignment was available within her restrictions at the employing establishment for the claimed period of lost time. It requested that she submit evidence to support why she did not perform the light/limited-duty assignment and why she sought compensation.

In a September 20, 2014 letter, appellant stated that she had provided all forms related to her August 20, 2013 employment-related injuries.

In a September 11, 2013 physician work activity status report, Mr. Tennant reiterated his diagnosis of crushing foot injury and diagnosed a fracture of unspecified bone(s) of the foot except the toes and an unspecified site of a foot sprain. He stated that, appellant could return to work with restrictions on the same day.

On May 16, 2014 Dr. Patouhas provided a history of the August 20, 2013 employment injury and appellant's left foot complaints, medical treatment, family, and social background. Examination findings were noted. Dr. Patouhas again diagnosed peripheral autonomic neuropathy, pain, difficulty walking, and a crush foot injury.

On October 1 and 16, 2014 appellant filed Form CA-7 claims for compensation for LWOP, and eight hours of overtime, and night differential pay from August 9 to October 17, 2014. Accompanying Form CA-7a dated October 1 and 16, 2014 showed that she claimed 490 hours of LWOP from August 9 to October 15, 2014 for treatment she received from Dr. Patouhas and Dr. Vaqar K. Siddiqui, a Board-certified neurologist, for her accepted crush foot injury which retriggered nerve damage.

On a facsimile sheet dated September 18, 2014, Dr. Patouhas stated that appellant would remain on medical leave until her next scheduled appointment on October 14, 2014.

In an October 16, 2014 report, Dr. Siddiqui advised that appellant was totally disabled from work through November 17, 2014.

By decision dated November 5, 2014, OWCP accepted that appellant sustained a left foot sprain and left foot fracture, except the toes. In a separate decision on the same date, it denied her claim for compensation commencing October 5, 2013. OWCP found that the medical evidence established that appellant was capable of performing limited/light-duty work with restrictions during the stated period and that the employing establishment was willing to accommodate these restrictions. Based on its acceptances of her claim for left foot conditions,

OWCP found that she could seek continuation of pay for the period August 21 through October 4, 2013 from the employing establishment.<sup>3</sup>

In an appeal request form dated February 10, 2015 and a letter dated March 11, 2015, appellant requested reconsideration of the denied period of wage loss in the November 5, 2014 decision. She contended that she was sent home on September 5, 2013 because she was not wearing the proper work boot. Appellant further contended that she could not return to work because she was severely injured at work on August 20, 2013 and she had not received 100 percent of her COP. She requested that OWCP consider the follow-up reports of Drs. Patouhas, Siddiqui, and Kahn.<sup>4</sup>

Appellant resubmitted Dr. Patouhas' June 5, 2014 FMLA form, Mr. Tennant's undated Form CA-20 report, and the employing establishment's September 3, 2013 modified-duty job offer.

In a May 7, 2015 decision, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was repetitious and previously considered.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>5</sup> 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.<sup>6</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review within must be received within one year of the date of that decision.<sup>7</sup> Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>8</sup>

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<sup>3</sup> In its November 5, 2014 decision denying appellant's claim for disability compensation, OWCP noted that she had filed a traumatic injury claim under File No. xxxxxx483 alleging that she sustained a left foot injury at work on March 28, 2014. The Board notes that appellant has appealed OWCP's denial of her claim under File No. xxxxxx483 to the Board, to which it assigned Docket No. 15-1519.

<sup>4</sup> The Board notes that the professional qualifications of Dr. Kahn are not contained in the case record.

<sup>5</sup> 5 U.S.C. §§ 8101-8193. 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>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.607(a).

<sup>8</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

## ANALYSIS

Appellant disagreed with OWCP's denial of her claim for compensation for total disability commencing October 5, 2013. She requested reconsideration and asserted that her disability was causally related to her accepted August 20, 2013 employment-related left foot injuries.

In her March 11, 2015 request for reconsideration and on appeal, appellant asserted that she was sent home on September 5, 2013 because she was not wearing the proper work boot. She further asserted that she could not return to work because she was severely injured at work on August 20, 2013 and she had not received 100 percent of her COP. The Board finds that these assertions do not show a legal error by OWCP or constitute new and relevant legal argument.

The underlying issue in this case is whether appellant submitted medical evidence establishing that she was totally disabled due to the accepted conditions for the period claimed. That is a medical issue which must be addressed by relevant new medical evidence.<sup>9</sup> However, while appellant requested that OWCP consider the follow-up reports of Drs. Patouhas, Siddiqui, and Kahn, she did not submit any pertinent new and relevant medical evidence in support of her request for reconsideration.

Appellant submitted the employing establishment's September 3, 2013 modified-duty job offer, Dr. Patouhas' June 5, 2014 FMLA form, and Mr. Tennant's undated Form CA-20 report, all previously of record. However, these documents are insufficient to justify a merit review of the claim as they are duplicative of evidence previously considered by OWCP. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review.<sup>10</sup> The Board finds, therefore, that these documents are insufficient to reopen appellant's claim for a merit review.<sup>11</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant argues the merits of her claim, alleging that she is entitled to 100 percent of her COP as her supervisor removed her from her assignment, made a false allegation against her, and delayed signing necessary documents for her compensation. She further argues that because her supervisor sent her home because she was not wearing the proper boot, the union filed a grievance against her supervisor. However, as previously stated, the Board does not have jurisdiction to review the merits of the claim.<sup>12</sup>

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<sup>9</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>10</sup> *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>11</sup> See *D.K.*, 59 ECAB 141 (2007).

<sup>12</sup> 20 C.F.R. § 501.3(e).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2015  
Washington, DC

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

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

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