

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

R.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Shelton, CT, Employer**

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**Docket No. 16-0966
Issued: August 22, 2016**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 30, 2016 appellant filed a timely appeal from an October 8, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last OWCP merit decision dated September 5, 2013, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from October 8, 2015, the date of the last decision was April 5, 2016. Since using April 6, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 30, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. In a January 23, 2003 decision, the Board affirmed a January 24, 2002 OWCP decision finding that OWCP met its burden of proof to terminate appellant's compensation based on her refusal of suitable work.³ In a September 12, 2014 decision, the Board affirmed a September 5, 2013 OWCP decision finding that appellant did not establish that her refusal of suitable work was justified.⁴ The facts and circumstances of the case and as set forth in the Board's prior decision are incorporated herein by reference.

In an appeal request form received on August 11, 2015, appellant requested reconsideration of the September 12, 2014 Board decision. In a narrative statement of the same date, she referenced page four of the Board's September 12, 2014 decision which found: "Therefore, these reports do establish that appellant's refusal of the offered position was justified." Appellant indicated that while she was an employee she always reported for work and carried out her work duties that her doctors found suitable. She noted that she did not refuse work and her time cards prove that she reported for work until her retirement on June 1, 2011. Appellant reported suffering for years from the results of her injuries sustained while employed with the employing establishment. She noted that after her retirement she sought treatment for her work injuries and underwent two operations. On August 11, 2011 appellant had a lipoma on her lower back removed and on January 6, 2015 she had neck surgery. Appellant noted attending every medical examination scheduled. She stated that she was seeking justice as she was injured while working and was unable to work in a full capacity due to the lack of proper medical treatment. Appellant indicated that these circumstances affected her family physically, emotionally, and financially. She submitted an excerpt from page four of the Board's decision dated September 12, 2014.

In an October 8, 2015 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

³ Docket No. 02-1023 (issued January 23, 2003). On February 7, 1994 appellant, a letter carrier, was injured when she slipped on ice. OWCP accepted the claim for concussion and contusions of the cervical and lumbar spine. Appellant eventually returned to light duty four hours per day. OWCP determined that a conflict of medical opinion existed between Dr. William S. Lewis, a Board-certified orthopedist, her treating physician, who indicated that she could work light duty four hours per day, and Dr. Alan H. Goodman, a Board-certified orthopedist, an OWCP referral physician, who determined that she had no residuals of the accepted conditions and could work full time. Appellant was referred to Dr. Kenneth M. Kramer, a Board-certified orthopedist, to resolve the conflict. In an October 5, 1999 report, Dr. Kramer found that she could work four hours per day within certain restrictions. The employing establishment offered appellant a modified light-duty position on December 21, 1999 conforming to Dr. Kramer's restrictions. Appellant declined the December 21, 1999 job offer. After providing her required procedural notices that the reasons for her refusal of the offered position were not justified, OWCP, on February 28, 2000, terminated her compensation for refusing suitable work.

⁴ Docket No. 14-0476 (issued September 12, 2014).

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁵ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁷

ANALYSIS

The Board, in its prior decision, found that the evidence submitted was insufficient to meet appellant’s burden of proof to establish that her refusal to accept the suitable work was justified. Thereafter, OWCP denied appellant’s reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. In her August 4, 2015 request for reconsideration, she referenced page four of the Board’s decision which found, “Therefore, these reports do establish that appellant’s refusal of the offered position was justified.” Appellant indicated that she always reported for work and carried out the duties that her doctors found suitable. She noted that she did not refuse work and her time cards prove that she reported for work until her retirement on June 1, 2011. Appellant reported suffering for years from the results of her work injuries and that she underwent two operations on her lower back and neck. She noted attending every medical examination scheduled. Appellant stated that she was seeking justice as she was injured while working and was unable to work in full capacity due to the lack of proper medical treatment. These assertions do not show a legal error by OWCP or a new and relevant legal

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

argument. These assertions are similar to assertions considered by the Board in its September 12, 2014 decision.⁸

The underlying issue in this case pertains to whether appellant submitted medical evidence establishing that her refusal to accept the suitable work was justified. That is a medical issue which must be addressed by relevant new medical evidence.⁹ However, appellant did not submit any relevant and pertinent new medical evidence in support of her claim. She submitted the previously quoted excerpt from the Board's decision. However, the Board notes that this sentence contains a typographical error as the decision clearly concluded that appellant's refusal of suitable work was not justified. As explained, the underlying issue in this claim is whether the medical evidence establishes that appellant's refusal to accept the suitable work was justified. Her submissions on reconsideration are not relevant to this underlying medical issue.¹⁰ Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

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

On appeal appellant reiterates her assertions that she never refused suitable work and that she strictly followed her attending physician's orders and worked within the limitations of her physical capabilities. She notes in her letter of August 4, 2015 that after her retirement she underwent two surgeries to correct the damage caused by her work injuries. As explained, the Board does not have jurisdiction over the merits of the claim.

CONCLUSION

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

⁸ See *James W. Scott*, 55 ECAB 606 (2004) (evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case).

⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. See *J.J.*, Docket No. 16-0555 (issued June 2, 2016); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2016
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