United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 16-0142**
	)	**Issued: February 25, 2016**
DEPARTMENT OF VETERANS AFFAIRS, HEALTH CARE SYSTEM, Sioux Falls, SD, Employer	)	

Appearances:
Appellant, pro se
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 November 2, 2015 appellant filed a timely appeal of an August 24, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated April 21, 2015, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of the claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

On appeal appellant argues that she was entitled to reimbursement for her initial medical treatment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 17, 2015 appellant, then a 26-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2015 she sustained an eye injury when a patient's urine splashed into her left eye while she was assisting with catheter care.

Appellant was examined on February 13, 2015 in the employing establishment emergency room and was prescribed medication and ointment to treat her eye. Dr. Carlie J. Carlson, an osteopath at the employing establishment clinic, examined appellant on February 19, 2015 and reported that she continued to use her prescribed eye drops. She concluded that appellant's left eye was fine with no problems.

In a letter dated March 9, 2015, OWCP requested additional medical evidence in support of appellant's claim. It stated that the medical evidence did not provide a diagnosed condition resulting from the employment incident. OWCP noted that exposure to a workplace hazard such as an infectious agent did not constitute a work-related condition entitling an employee to medical treatment under FECA.

Dr. Carlson completed a note dated February 19, 2015. She indicated that a patient's urine splashed into appellant's left eye and that the patient had a history of a urinary tract infection. Dr. Carlson reported that appellant's left eye was fine with no drainage, discharge, or redness. She noted that appellant had used Vigamox ophthalmological drops for her eye and could work with no restrictions. On March 27, 2015 Dr. Carlson diagnosed body fluid exposure in the left eye and reported appellant's history of injury. She indicated that appellant utilized prescribed antibiotics and that her left eye had no physical problems and normal visual acuity on February 19, 2015.

By decision dated April 21, 2015, OWCP denied appellant's claim, finding that the evidence submitted did not contain a diagnosed condition resulting from her employment incident. It explained that section 10.303(a) of its regulations held that simple exposure to a workplace hazard such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under FECA.[2]

Appellant requested reconsideration on June 25, 2015. In support of her request, she submitted a letter from the employing establishment explaining that her incident occurred after hours and required her to seek treatment from the employing establishment emergency room rather than the occupational health clinic. The emergency room did not have antibiotics available for appellant and instructed her to fill her prescription from an outside source. Appellant was further told that this expense would be covered by OWCP. The employing

[2] 20 C.F.R. § 10.303. This regulation further provides that an employing establishment should not use a Form CA-16 to authorize medical testing unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. The regulation also notes that employers may be required to provide medical testing or services under other statutes or regulations, such as the Occupational Safety & Health Administration regulations. Section 10.313 of the regulations provide that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized in section 20 C.F.R. § 10.303. It may approve payment for medical expenses incurred even if a CA-16 form authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis. *See C.L.*, Docket No. 14-5 (issued May 5, 2014).

establishment concluded, "The claimant was left with the out-of-pocket medical expense for the antibiotic and this should not have been the case."

Appellant also submitted an addendum report dated June 16, 2015 from Dr. Carlson. She concluded, "The work incident of the accidental splash/spray of urine, hit her face/left eye, and caused the bodily-fluid exposure." Dr. Carlson indicated that appellant's diagnosis was personal history of contact with and suspected exposure to potential hazardous body fluids.

By decision dated August 24, 2015, OWCP declined to reopen appellant's claim for consideration of the merits as Dr. Carlson's June 16, 2015 report was repetitious and consisted of copies of documentation that was previously considered.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.[3] Section 10.606(b)(3) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting, in writing, an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.[4] Section 10.608 of OWCP's regulation provides that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.[5] Section 10.607(a) of OWCP's regulation provides that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.[6]

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

The issue 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 consideration of the merits of the claim. Appellant filed a timely request for reconsideration on June 25, 2015 from the April 21, 2015 merit decision. With her request, she did not set forth arguments showing that OWCP erroneously applied or interpreted a specific point of law nor did she advance a relevant legal argument not previously considered by OWCP.

[3] 5 U.S.C. §§ 8101-8193, 8128(a).

[4] 20 C.F.R. § 10.606(b)(3).

[5] *Id*. at § 10.608.

[6] *Id*. at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*¸ Chapter 2.1602.4 (October 2011).

In support of her request for reconsideration, appellant attempted to submit additional relevant and pertinent new evidence not previously considered by OWCP. She submitted an addendum to Dr. Carlson's reports dated June 16, 2015. Dr. Carlson indicated that appellant's diagnosis was personal history of contact with and suspected exposure to potential hazardous body fluids. The Board has held that material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.[7] Dr. Carlson previously diagnosed body fluid exposure in the left eye in her March 27, 2015 report considered by OWCP in the April 21, 2015 merit decision. As the addendum report was duplicative of evidence already in the record, this report was not sufficient to require OWCP to reopen appellant's claim for further merit review.

Accordingly, as appellant's request for reconsideration did not meet the requirements for reopening her case, the Board finds that OWCP properly denied merit review.

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 August 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2016
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

[7] *P.O.*, Docket No. 14-1675 (issued December 3, 2015). *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).