

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

K.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Stevensville, MT, Employer**

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**Docket No. 16-1721
Issued: February 14, 2017**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2016 appellant filed a timely application for review from an August 3, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from September 25, 2015, the date of the most recent merit decision, to 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 appellant's claim.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 13, 2014 appellant, then a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral patellar tendinitis as a result of her federal employment.

By letter dated May 19, 2014, OWCP advised appellant that further factual and medical evidence was necessary to establish her claim. Appellant was afforded 30 days to submit this additional evidence. No response was received.

By decision dated July 10, 2014, OWCP denied appellant's claim, finding that she had not established the factual elements of her claim.

In a report dated October 20, 2014, Dr. Larry R. Stayner, Board-certified in orthopedic surgery, noted that appellant developed pain with repetitive motion of both knees while driving her mail delivery route. He noted appellant's diagnosis as patellar tendinitis, on the left side from operating the gas and brake pedals repetitively, and on the right side from repeated bracing of the leg during frequent stops and starts while driving. Dr. Stayner concluded that appellant's bilateral knee condition was causally related to her employment as this was what caused the pain and there was nothing else that initiated this pain.

By letter dated June 8, 2015, Dr. Stayner again noted that appellant developed patellar tendinitis in both knees as a result of the repetitive physical mechanical motion of both knees while performing the driving portion of her work as a rural carrier associate. He again noted that appellant's left patellar tendinitis was related to operating the gas and brake pedals repetitively, while her right-sided patellar tendinitis was from repeated bracing of the leg during frequent stops and starts while driving and delivering mail. Dr. Stayner again concluded that nothing else caused appellant's pain.

Appellant requested reconsideration on July 7, 2015.

By decision dated September 25, 2015, OWCP accepted that appellant had established the factual elements of her claim, but denied modification of the denial of the claim as appellant failed to submit rationalized medical evidence sufficient to establish that her condition had been caused or aggravated by factors of her federal employment.

Appellant again requested reconsideration on May 18, 2016. With her request, she submitted a report dated April 25, 2016 from Dr. Stayner. Dr. Stayner reiterated that appellant developed patellar tendinitis in both knees due to an occupational disease resulting from repetitive physical mechanical motion of both knees while performing the driving portion of her employment as a rural carrier associate. He again noted that the left patellar tendinitis was from operating the gas and brake pedals repetitively over a long period of time and the right patellar tendinitis was from repeated bracing of the leg, due to frequent stops and starting while driving and delivering mail. Dr. Stayner again opined that appellant's condition was 100 percent causally related to her job duties as her duties caused pain and nothing else initiated this pain. He concluded: "This job and occupational exposure was 100 percent cause of her knee pain."

By decision dated August 3, 2016, OWCP denied appellant's request for reconsideration. It found that Dr. Stayner's April 25, 2016 report was cumulative evidence that had previously been considered, as it was substantially similar to his October 20, 2014 and June 8, 2015 reports.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

OWCP issued a September 25, 2015 decision, finding that appellant failed to submit sufficient medical evidence to establish causal relationship between specific employment factors and appellant's diagnosed bilateral patellar tendinitis. On May 18, 2016 appellant requested reconsideration. With her request, she submitted a letter from Dr. Stayner dated April 25, 2016. OWCP denied her request for reconsideration by decision dated August 3, 2016.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish causal relationship between specific factors of her federal employment and her diagnosed bilateral patellar tendinitis. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant failed to submit any relevant and pertinent new evidence with her request for reconsideration. The only evidence submitted by appellant on reconsideration of the September 25, 2015 decision was Dr. Stayner's April 25, 2016 report. This report was an almost exact duplicate of Dr. Stayner's October 20, 2014 and June 8, 2015 reports, with the addition of a sentence stating a degree of confidence, rather than providing additional explanation. He did not provide any further opinions as to how or why appellant's work duties caused or aggravated her bilateral knee condition. As the April 25, 2016 report was cumulative of the October 20, 2014 and June 8, 2015 reports, which had previously been reviewed by OWCP on September 25, 2015 appellant submitted no relevant and pertinent new evidence on reconsideration, not previously considered by OWCP.

² 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

³ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

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

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 3, 2016 is affirmed.

Issued: February 14, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board