

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

L.N., Appellant)

and)

GENERAL SERVICES ADMINISTRATION,)
PUBLIC BUILDING SERVICE,)
Kansas City, MO, Employer)

Docket No. 16-1507
Issued: January 9, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 19, 2016 appellant filed a timely appeal from a May 27, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated October 15, 2015 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 under to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 18, 2010 appellant, then a 49-year-old property manager, filed a traumatic injury claim (Form CA-1) alleging that she sustained body aches and pains as a result of a vehicular incident on August 17, 2010. She stopped work on August 19, 2010. By decision dated September 14, 2010, OWCP accepted appellant's claim for cervical strain and lumbar strain. Appellant received wage-loss compensation on the supplemental rolls from October 4, 2010 through March 11, 2011.

On February 12, 2015 appellant filed a claim for recurrence of medical treatment (Form CA-2a) on September 22, 2014.

In a medical report dated April 23, 2015, Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, diagnosed neck pain, facet mediated pain, cervical degenerative joint disease, cervical radiculitis, and cervical spinal stenosis. He noted that appellant's symptoms were "apportioned" to the work-related injury which occurred in 2010.

By decision dated May 20, 2015, OWCP denied appellant's claim for recurrence of medical treatment. It noted that she had not submitted sufficient medical evidence to establish disability due to the accepted injury.

Appellant requested a review of the written record before an OWCP hearing representative on June 25, 2015. By decision dated July 31, 2015, OWCP denied her request for a review of the written record as untimely.

On August 11, 2015 OWCP received appellant's request for reconsideration. With her request, appellant attached a narrative statement and a medical report dated June 8, 2015 from Dr. Valentino. In his report, Dr. Valentino reiterated his diagnoses of April 23, 2015, and added the condition of neck sprain and strain. He explained that appellant had symptoms following a work-related motor vehicle accident which occurred on August 17, 2010. Appellant was out of work for a few months and then conservatively returned to part-time work, followed by return to full-time work. In 2012 she was involved in a nonwork-related motor vehicle accident in which she suffered a C7 facet fracture which was treated with rest. Dr. Valentino related that appellant eventually returned to work following the 2012 motor vehicle accident.

By decision dated October 15, 2015, OWCP reviewed the merits of appellant's claim and affirmed its decision of May 20, 2015. It noted that Dr. Valentino's reports were insufficiently rationalized to establish a claim for recurrence of medical treatment.

On March 8, 2016 OWCP received appellant's request for reconsideration. With her request, appellant attached Dr. Valentino's April 23, 2015 report, along with a narrative statement. In her statement dated March 8, 2016, she argued that OWCP had not given sufficient weight to Dr. Valentino's April 23, 2015 report.

By decision dated May 27, 2016, OWCP denied appellant's request for reconsideration of its decision dated October 15, 2015. It found that appellant had not submitted relevant evidence not previously considered in support of her request for reconsideration.

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 an October 15, 2015 decision, finding that appellant had not submitted sufficient medical evidence to support a recurrence of medical treatment. On March 8, 2016 appellant requested reconsideration of this decision. With her request, appellant submitted a narrative statement along with an April 23, 2015 report from Dr. Valentino.

As noted above, the Board does not have jurisdiction over the merits of the October 15, 2015 decision. 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 her claim. In her March 8, 2016 request for reconsideration, 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, she 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 medical evidence to establish a recurrent need for medical treatment causally related to the accepted August 17, 2010 injury. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence. However, appellant did not submit any new and relevant evidence in this case. The report of Dr. Valentino dated April 23, 2015 was duplicative of evidence previously submitted and had already been considered in OWCP's previous decisions. Because it had already been considered, it was insufficient to warrant reconsideration of appellant's claim.⁴

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.

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).

⁴ *R.B.*, Docket No. 13-2176 (issued February 20, 2014).

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 May 27, 2016 is affirmed.

Issued: January 9, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board