

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 17-0614
Issued: June 13, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 25, 2017 appellant filed a timely appeal from a January 10, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated July 20, 2016, 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 the claim.

ISSUE

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

FACTUAL HISTORY

On August 22, 2010 appellant, then a 43-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained right foot, calf, knee, and hip pain as well as

¹ 5 U.S.C. § 8101 *et seq.*

elbow, shoulder, and neck pain on the right when she struck a rail while driving a forklift. The employing establishment had no work available for appellant beginning October 17, 2010. On November 29, 2010 OWCP accepted her claim for right muscle spasm. It authorized compensation benefits from October 17 through November 25, 2010 and December 25, 2010 through February 16, 2011. Appellant returned to work on February 17, 2011. She last received medical treatment for her accepted employment injuries on June 13, 2011.

The claim was essentially dormant until 2014. On November 21, 2014 appellant filed a recurrence claim (Form CA-2a) alleging that on October 3, 2014 she sustained chronic flare-ups of muscle and joint pain during bad weather. She attributed her condition to driving a tow motor on a continuous daily basis on concrete floors with cracks and dips. Appellant listed her conditions after returning to work as tenderness on the right side of her neck, pain and tenderness in the right shoulder, knee, ankle, thigh, calf, lower back, and groin.

With her claim, appellant submitted a report from Dr. Uche G. Iheme, a Board-certified internist, who examined her on October 6, 2014 due to right-sided pain. He diagnosed right hip pain and multiple joint complaints.

In a letter dated February 24, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of her recurrence claim. It afforded her 30 days to respond. No additional evidence was received.

By decision dated March 31, 2015, OWCP denied appellant's recurrence claim. It found that she had described a set of occupational factors, including driving a tow motor, as causing a renewed need for medical treatment. OWCP informed appellant that this claim was indicative of a new occupational disease and not a recurrence. It created a new occupational disease claim and denied her claim for recurrence as she had not established that she required additional medical treatment due to a worsening of her accepted work-related conditions without an intervening cause.

Appellant submitted a July 28, 2015 duty status report from Dr. Iheme diagnosing tenderness of the right side of the body and indicating that her diagnosis was nonspecific. Dr. Iheme found that she was capable of full-duty work.

On January 22, 2016 appellant requested a change of physicians from Dr. Iheme to Dr. Audley Mackel, a Board-certified orthopedic surgeon.

Appellant requested reconsideration of OWCP's March 31, 2015 decision on February 17, 2016. She noted that her husband was a physical therapist and he had treated her. Appellant described her work duties of driving across potholes and cracks in the workplace floor which aggravated the pain of her prior injuries. She asserted that the majority of the cracks in the floor were near her work station. Appellant requested that the employing establishment repair the floor. She asserted that her pain had been consistent since she returned to work on February 16, 2011. Appellant listed additional injuries, including trigger thumb and left wrist injuries from a June 12, 2012 motor vehicle accident, and pallets falling on her right calf and ankle on December 4, 2015.

Appellant provided additional medical evidence. Dr. Iheme completed a form report on January 24, 2011. He found tenderness on palpation in the right shoulder, right hip, and right ankle. Dr. Iheme diagnosed generalized body pains and fibromyalgia. He indicated by checking a box marked “yes” on a form report that appellant’s condition was caused or aggravated by her employment activities.

On March 2, 2011 appellant visited Dr. Soumya Chatterjee, a Board-certified rheumatologist, who diagnosed myalgia and myositis, disorders of the sacrum, disorders of the bursae and tendons in the shoulder, and cervicalgia.

In a note dated September 28, 2011, Dr. Michael Walker, a Board-certified orthopedic surgeon, reported examining appellant due to pain in her right hand and triggering of the right thumb. He noted that she operated a forklift and could not relate the onset of her hand problems to any particular injury. Dr. Walker diagnosed right trigger thumb and mild carpal tunnel syndrome. He also diagnosed cervicalgia, disorders of the bursae and tendons in the shoulder region, lateral epicondylitis, generalized osteoarthritis, myofascial pain syndrome, generalized muscle weakness, and chest pain. On October 7, 2011 Dr. Walker found that appellant’s right thumb pain had improved, but recommended surgery.

Dr. John M. Hickner, a Board-certified family practitioner, examined appellant on July 2, 2012 due to her wrist condition. He noted that appellant had a history of left radial styloid tenosynovitis, but her x-rays demonstrated mild soft tissue swelling.

On April 2, 2013 Dr. Iheme examined appellant due to pain in the right big toe nail bed.

In a letter dated February 22, 2016, OWCP authorized appellant’s change of physicians. It requested a detailed medical report from Dr. Mackel.

By decision dated July 20, 2016, OWCP reviewed the merits of appellant’s claim, but denied modification of its prior decision. It again noted that she had identified new work factors, an intervening injury, and had not established a recurrence of disability.

Appellant again requested reconsideration of OWCP’s July 20, 2016 decision on October 17, 2016. She asserted that she was submitting additional medical evidence. Appellant resubmitted Dr. Iheme’s July 28, 2015 duty status report. She also submitted a note dated September 29, 2016 from Dr. Iheme listing her treatments from March 2014 through September 2016. Dr. Iheme indicated that on June 9, 2014 he evaluated and treated right wrist tendinitis, on November 18, 2014 he had evaluated and treated chronic myofascial pain, on June 29, 2015 he had evaluated and treated right hip pain, on September 29, 2015 he had evaluated and treated right shoulder pain, on November 2, 2015 he evaluated and treated pain on the right side of the body, and on March 29, 2016 he evaluated and treated myofascial pain syndrome. On October 13, 2016 he completed a duty status report and diagnosed tenderness on the right side of the body. Dr. Iheme indicated that appellant could perform regular-duty work.

By decision dated January 10, 2017, OWCP denied appellant’s request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

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.² 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.³ Section 10.608 of OWCP's regulations provides that when a request for reconsideration is timely, but does not 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.⁴ Section 10.607(a) of OWCP's regulations 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.⁵

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.⁶ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case under 5 U.S.C. 8128(a).⁷

ANALYSIS

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

On November 29, 2010 OWCP accepted appellant's claim for right muscle spasm. On November 21, 2014 appellant filed a claim for a recurrence of disability and attributed her current conditions to driving a tow motor over potholes and cracks in the employing establishment floor. OWCP found that she had implicated additional employment duties and

² *Id.* at § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608.

⁵ *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁶ *B.T.*, Docket No. 16-0785 (issued September 21, 2016); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁷ *See M.H.*, Docket No. 16-1382 (issued December 5, 2016); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

denied her recurrence claim, finding that her claim should be developed as a new occupational disease claim.⁸

The Board does not have jurisdiction over the July 20, 2016 merit decision and can consider only whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), which would require OWCP to reopen the case for merit review. The underlying issue on reconsideration is whether the medical evidence of record establishes causal relationship between her disability from work and accepted employment injury of right muscle spasm. This issue is medical in nature.

The Board finds that appellant did not attempt to show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not attempt to advance a relevant legal argument not previously considered by OWCP. In her October 17, 2016 request for reconsideration, she merely requested that OWCP review the medical evidence submitted. The Board therefore finds that 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 Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered by OWCP. Dr. Iheme's July 28, 2015 and October 13, 2016 duty status reports were duplicative and the July 28, 2015 report was already of record. 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 Dr. Iheme's September 29, 2016 note merely listed the treated conditions without providing any new observations or opinion on the causal relationship between these conditions and appellant's accepted employment injury of right muscle spasm. 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.¹⁰ As Dr. Iheme's July 28, 2015 and October 13, 2016 reports did not address the basis of denial of the underlying claim, it does not constitute relevant or pertinent new evidence requiring OWCP to reopen appellant's claim for consideration of the merits.

CONCLUSION

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

⁸ *Compare S.S.*, Docket No. 16-0675 (issued July 15, 2016) (finding that, although appellant had filed a recurrence claim, the intervening employment injury, established that her claim should be developed as a traumatic injury). The new occupational disease claim is not before the Board on the present appeal.

⁹ *C.H.*, Docket No. 17-0074 (issued March 17, 2017).

¹⁰ *B.T.*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT January 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2017
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