

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

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<b>P.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 17-0692</b>
	)	<b>Issued: June 9, 2017</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, Washington, DC, Employer</b>	)	

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 6, 2017 appellant filed a timely appeal from a September 8, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated April 28, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of the claim.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its September 9, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore the Board lacks jurisdiction to review this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On March 3, 2016 appellant, then a 59-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2016 she injured her upper right shoulder, upper back, and lower right buttock while moving a sofa chair in the performance of her job duties.<sup>3</sup>

In a letter dated March 24, 2016, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. It administratively approved a payment of a limited amount of medical expenses without formally considering the merits of the claim. Because appellant had not returned to work, OWCP reopened appellant's claim for consideration as she had not returned to full-duty work. It requested additional factual and medical evidence in support of appellant's claim and afforded her 30 days for a response.

In response, appellant submitted a note from Dr. Jeffrey Berg, a Board-certified orthopedic surgeon, dated February 19, 2016 diagnosing right trapezial and parascapular myofascial strain. She also submitted a note dated March 10, 2016, from Dr. Gordon Theisz, a Board-certified family practitioner, diagnosing right upper thoracic strain and right gluteal strain. Dr. Theisz reported that appellant was lifting a sofa to get to a file cabinet drawer and experienced right arm pain as well as thoracic and right gluteal pain. Dr. Stephanie Clop, a Board-certified physiatrist, examined appellant on March 10, 2016 and diagnosed lumbosacral and neck strains and prescribed physical therapy. On April 11, 2016 she diagnosed right upper thoracic strain, right gluteal strain, and right supraspinatus tendinitis.

On April 12, 2016 appellant described her employment incident, noting that she was moving a sofa in her office that was blocking a filing cabinet and her purse fell under the sofa. She indicated that she was transferring files from one office to another. Appellant first sought medical treatment on February 17, 2016.

By decision dated April 28, 2016, OWCP denied appellant's claim for compensation as the medical evidence of record did not demonstrate that the claimed medical condition was causally related to the established work events.

On July 15, 2016 appellant requested reconsideration of the April 28, 2016 OWCP decision. She again asserted that she injured herself while moving a sofa to reach files in a file cabinet. Appellant provided a photograph of the sofa. She submitted a note from Dr. Berg dated March 8, 2013 diagnosing thoracic and lumbar strain with possible right lumbar radiculopathy. Appellant also resubmitted Dr. Clop's March 10, 2016 note.

By decision dated September 8, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that she failed to submit relevant and pertinent new evidence not previously considered.

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<sup>3</sup> Appellant had a separate claim dated December 15, 2015 for left upper arm and shoulder pain which was accepted by OWCP on January 6, 2010 for left shoulder tendinitis. File No. xxxxxx092. The Board reviewed this claim on June 16, 2011 and found that appellant had not established a recurrence of disability on October 28, 2009. Docket No. 10-1912 (issued June 16, 2011). This claim is not presently before the Board.

## 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.<sup>4</sup> 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.<sup>5</sup> Section 10.608 of OWCP's regulations provide 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.<sup>6</sup> Section 10.607(a) of its regulations provide 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.<sup>7</sup>

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.<sup>8</sup>

## ANALYSIS

The Board finds OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The underlying issue in this case is whether appellant has established causal relationship between her diagnosed strains and her employment injury on February 17, 2016. This is a medical issue.<sup>9</sup>

Appellant failed to submit any relevant and pertinent new evidence in support of her reconsideration request. The March 8, 2013 note from Dr. Berg, while new, fails to address appellant's current condition and fails to offer an opinion on causal relationship. Dr. Berg did not mention the February 17, 2016 employment incident as this note predates appellant's most recent claim by almost four years. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

Dr. Clop's March 10, 2016 resubmitted note was in the record at the time of OWCP's April 8, 2016 merit decision. As this note is not relevant and pertinent new evidence not

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.608.

<sup>7</sup> *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>8</sup> *B.T.*, Docket No. 16-0785 (issued September 21, 2016); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>9</sup> *A.R.*, Docket No. 16-1416 (issued April 10, 2017).

<sup>10</sup> *Id.*

previously considered by OWCP, it is insufficient to require OWCP to reopen appellant's claim for consideration of the merits. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.<sup>11</sup>

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.<sup>12</sup> OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on 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).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *M.J.*, Docket No. 16-1339 (issued December 14, 2016); *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>12</sup> *See A.M.*, Docket No. 16-0499 (issued June 28, 2016); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under OWCP's FECA implementing regulations, OWCP will deny the application for reconsideration without reopening the case for a review on the merits).