

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).

FACTUAL HISTORY

On January 22, 2015 appellant then a 50-year-old clerk/mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee when she slipped and fell at the employing establishment after returning from checking mail in a blue box. She stopped work on January 21, 2015.

Appellant was treated by a physician assistant on January 21, 2015 who indicated that she could return to work on January 22, 2015 with restrictions on the left knee.

In a January 28, 2015 letter, OWCP advised appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned opinion addressing the relationship between her claimed condition and specific work factors.

Appellant submitted a report from Dr. Daniel M. Hampton, a Board-certified orthopedist, dated January 30, 2015, who treated her for left knee pain after a slip and fall incident at work. He noted appellant's history was significant for left knee arthroscopic surgery. Dr. Hampton diagnosed left knee pain and arthritis of the knee. He performed an inter-articular corticosteroid injection. In a certificate of disability, Dr. Hampton noted that appellant was disabled from work from January 30 to February 27, 2015. In a February 3, 2015 duty status report, he diagnosed knee contusion and indicated that appellant was totally disabled.

In a March 12, 2015 decision, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the incident occurred as alleged.

On September 22, 2015 appellant requested reconsideration. She indicated that she slipped and fell when emptying the blue boxes at work because the janitors failed to put a mat in front of the door where employees enter and exit. Appellant asserted that she should be paid for her time off work and be authorized to attend physical therapy.

With her request for reconsideration, appellant submitted a statement explaining that on January 21, 2015 she went outside to collect mail from the blue boxes and when she entered the building she slipped and fell. She reported being unable to get up due to pain in her knee and her coworker called an ambulance. Appellant was treated in the emergency room and was prescribed a knee brace, crutches and was taken out of work for three days. She reported being unable to stand or walk without her knee brace and crutches. Appellant indicated that her job required her to be on her feet all day, pushing and pulling heavy equipment and mail. After the injury, she was unable to perform her job due to her knee brace and crutches. Appellant noted that Dr. Hampton gave her a corticosteroid injection into her knee, a knee brace, and medication. She indicated that Dr. Hampton provided a certificate of disability from January 30 to February 27, 2015.

In an order dated January 30, 2015, Dr. Hampton diagnosed left knee pain and arthritis of the knee and recommended physical therapy for four weeks.

Appellant submitted a letter of removal from the employing establishment which noted that she was removed from her position because she was absent without leave and failed to maintain regular attendance.

In a decision dated December 22, 2015, OWCP modified the March 12, 2015 decision finding that appellant submitted sufficient evidence to establish that the claimed incident occurred as alleged. However, it denied the claim because she had not submitted a rationalized medical opinion explaining how the diagnosed conditions were causally related to the January 21, 2015 work incident.

On March 31, 2016 appellant requested reconsideration. In support of her request, she submitted four identical letters entitled notice of appeal dated October 13, December 31, 2015, March 21, 2016 and one undated letter addressed to the Board. In these letters appellant requested payment for her time off from work for eight weeks due to her fall and payment for her physical therapy for 12 weeks. She reiterated that on January 21, 2015 she went outside to collect mail from blue boxes and when she entered the building she slipped and fell. Appellant reported being unable to get up due to pain in her knee and her coworker called an ambulance. She was treated in the emergency room and prescribed a knee brace and crutches, and was taken out of work for three days. Appellant reported being unable to stand or walk without her knee brace and crutches. She indicated that her job required her to be on her feet all day, pushing and pulling heavy equipment and mail; however, she was unable to perform her job with a knee brace and crutches. Appellant advised that Dr. Hampton gave her a corticosteroid injection into her knee and a knee brace and recommended physical therapy.

Appellant submitted a document entitled “Processing an Appeal Practice and Procedure Before the U.S. Employees’ Compensation Appeals Board.” She also submitted a copy of the 20 C.F.R. § 501, the Code of Federal Regulations governing the Employees’ Compensation Appeals Board.

In an June 23, 2016 decision, OWCP denied appellant’s February 28, 2016 request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

⁴ 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

OWCP denied appellant’s claim because she had failed to provide sufficient medical evidence to establish that the diagnosed conditions were causally related to her work duties. On February 28, 2016 appellant requested reconsideration.

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 the claim. In her request for reconsideration, appellant failed to show that OWCP erroneously applied or interpreted a specific point of law. In her notices of appeal dated October 13, December 31, 2015, and March 21, 2016, appellant requested payment for eight weeks of time off due to a fall while at work and payment for 12 weeks of physical therapy. She reiterated the facts of her claim noting that on January 21, 2015 she went outside to collect mail from blue boxes and she slipped and fell. Appellant was transported to the emergency room and prescribed a knee brace, crutches and was taken out of work for three days. She reported not being able to stand or walk without her knee brace and crutches. Appellant indicated that her job required her to be on her feet all day, pushing and pulling heavy equipment and mail; however, she was unable to work due to her knee brace and crutches. She also noted the treatment provided by Dr. Hampton. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant sustained a traumatic injury causally related to the accepted employment injury of January 21, 2015. That is a medical issue which must be addressed by relevant new medical evidence.⁷ However, appellant did not submit any new and relevant medical evidence in support of her claim.

The only evidence submitted was a document entitled “Processing an Appeal Practice and Procedure before the U.S. Employees’ Compensation Appeals Board” and a copy of 20 C.F.R. § 501. As noted, the underlying issue is medical in nature. This document is not relevant to the medical issue. The Board has held that evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁸

On appeal, appellant asserts that she submitted sufficient evidence to establish that she sustained a traumatic injury in the performance of duty. As explained above, the Board does not have jurisdiction over the merits of the claim.

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b).

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ *C.N.*, Docket No. 08-1569 (issued December 9, 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 new 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 of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 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