



## **FACTUAL HISTORY**

On September 25, 2008 appellant, then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 2008 she tripped over a metal plate and injured her left leg. She stopped work on September 25, 2008 and did not return.<sup>3</sup>

Appellant provided a statement indicating that on September 25, 2008 she was coming into work with a coworker, and as she walked down the main aisle to their unit, she tripped on a protruding plate and fell face forward. She was treated at the emergency room and was diagnosed with a left knee contusion. Appellant reported later experiencing right shoulder swelling and sought treatment from her primary care doctor for a rotator cuff injury.

Appellant was treated by Dr. M.A. Alawad, a Board-certified internist, on September 25, 2008, for a right shoulder and left knee injury. In notes dated October 2 to 30, 2008, Dr. Alawad saw appellant in follow-up for a right shoulder rotator cuff tear and a left knee injury. He noted that she was totally disabled. In a December 5, 2008 report, Dr. Alawad noted treating appellant on September 25, 2008 secondary to a fall at work which caused a right shoulder injury.

OWCP accepted the claim for sprain of the right shoulder and upper arm, partial tear of right rotator cuff, contusion of the left leg and pain in the joint of the left shoulder region. On January 12, 2009 appellant filed a claim for compensation (Form CA-7) for leave without pay for 48.10 hours for the period November 26, 2008 to January 12, 2009. She indicated that she attended physical therapy appointments.<sup>4</sup>

Appellant submitted a January 25, 2013 duty status report (Form CA-17) from Dr. Alawad who noted findings of low back, left knee and right shoulder pain. Dr. Alawad indicated that appellant could return to work full time with restrictions. On October 21, 2014 he noted that she had left knee pain secondary to a contusion from a fall in 2008. Dr. Alawad noted that conservative treatment failed. He indicated that appellant had pain and swelling when standing and walking and she could continue to work as long as she was primarily sedentary.

On June 11, 2015 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of right shoulder pain on April 20, 2015 causally related to her work injury. She was on limited duty at the time of the recurrence and stopped work.

By letter dated June 23, 2015, OWCP advised appellant of the type of factual and medical evidence needed to establish her recurrence claim.

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<sup>3</sup> Appellant has another claim, OWCP File No. xxxxxx852, for a March 1, 1999 injury. OWCP accepted this claim for bilateral wrist tendinitis, right rotator cuff tendinitis, and right shoulder impingement syndrome. On January 12, 2009 it doubled OWCP File No. xxxxxx852 with the current claim before the Board, OWCP File No. xxxxxx315, OWCP File No. xxxxxx852 serves as the Master File.

<sup>4</sup> The record indicates that appellant received intermittent wage-loss compensation for this period under File No. xxxxxx852. In that claim, she continued to receive intermittent wage-loss compensation through November 17, 2012. On November 18, 2012 appellant began receiving wage-loss compensation on the periodic rolls. This continued until she returned to full-time light duty on January 5, 2014. Thereafter, appellant continued to receive intermittent wage-loss compensation through October 1, 2014 under that claim.

Appellant submitted a June 2, 2015 report from Dr. Alawad who evaluated her for left knee bursitis. Dr. Alawad performed an intra-articular depomedrol injection and noted that appellant was disabled until June 9, 2015.

On September 14, 2015 appellant filed a claim for compensation (Form CA-7) for leave without pay for 44 hours for the period August 27 to September 3, 2015. She noted being treated by a physician.

In a September 17, 2015 decision, OWCP denied appellant's claim for a recurrence of disability on April 20, 2015.

On December 15, 2015 OWCP denied appellant's claim for compensation for the period August 27 to September 3, 2015.

On January 12, 2016 appellant requested reconsideration of the December 15, 2015 decision. She submitted a January 6, 2016 report from Dr. Alawad who provided a history of appellant's treatment for left knee and right shoulder injuries. Dr. Alawad diagnosed right medial meniscus tear and indicated that this was a work-related injury.

In a decision dated April 11, 2016, OWCP denied modification of the December 15, 2015 decision.

On February 2, 2017 appellant filed a claim for recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of left knee pain and swelling on February 14, 2017 causally related to her accepted September 28, 2008 work injury. She was on limited duty at the time of the recurrence and stopped work on June 2, 2015.

Appellant submitted a magnetic resonance imaging (MRI) scan of the left knee dated September 9, 2015 which revealed a grade III tear in the medial meniscus, mild intrasubstance mucoid degeneration in the posterior horn of the lateral meniscus, mild-to-moderate osteoarthritis changes with chondromalacia, edema, and cysts in the lateral femoral condyle.

In a letter dated April 4, 2017 and amended on April 7, 2017, OWCP indicated that the most recent claim for recurrence dated February 2, 2017 appeared to be a claim for wage loss for the same period that was previously denied by OWCP. It advised appellant that if she disagreed with the reconsideration decision she should pursue her appeal rights attached to that decision.

In a letter dated and received April 4, 2017, appellant "appeal[ed]" the decision dated April 11, 2016. OWCP treated this as a request for reconsideration. No additional evidence accompanied the request.

By an April 14, 2017 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

### LEGAL PRECEDENT

Under section 8128(a) of FECA,<sup>5</sup> 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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>6</sup>

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.<sup>7</sup>

### ANALYSIS

OWCP denied appellant’s claim for compensation for the period August 27 to September 3, 2015 because the medical evidence of file had not established that she was disabled from work as a result of her accepted work-related medical conditions. Thereafter, it denied appellant’s timely filed reconsideration request, without conducting a merit review.

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 she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument not previously considered. On April 4, 2017 appellant submitted a statement appealing the decision dated April 11, 2016. This does not show a legal error by OWCP or constitute a new and relevant legal argument. The underlying issue in this case is whether the claimed recurrence of disability for the period August 27 to September 3, 2015 was causally related to her accepted work-related medical conditions. That is a medical issue which must be addressed by relevant new medical evidence.<sup>8</sup> However, appellant did not submit any pertinent new and relevant medical evidence in support of her claim.

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

With respect to the third requirement, submitting pertinent new and relevant evidence not previously considered by OWCP, appellant submitted an MRI scan of the left knee dated September 9, 2015. While the MRI scan is new to the record, it is not relevant; however, as the underlying issue is whether the claimed period of disability from August 27 to September 3, 2015 was causally related to her accepted work-related medical conditions. In this report, the physician fails to specifically address whether the period of disability was causally related to the accepted work-related medical conditions. Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

On appeal appellant asserts that she continued to have problems with her left knee and right shoulder which were getting progressively worse. She noted submitting an MRI scan and a letter from her physician in support of her claim. As explained, the Board does not have jurisdiction over the merits of the claim.

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).

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<sup>9</sup> C.N., Docket No. 08-1569 (issued December 9, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2017  
Washington, DC

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

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

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