

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

T.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Littleton, CO, Employer**

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**Docket No. 18-0089
Issued: April 12, 2018**

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 October 16, 2017 appellant filed a timely appeal from an April 17, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated January 24, 2017 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 over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. The Board's jurisdiction, however, is limited to the evidence that was before OWCP at the time it issued its final decision. Thus, the Board is precluded from considering this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 27, 2016 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she strained her left knee while walking in the performance of her federal employment duties. She submitted medical reports in support of her claim.

By development letter dated December 21, 2016, OWCP informed appellant that additional information was necessary to support her claim, including evidence establishing that appellant experienced the incident alleged to have caused the injury. It further noted that appellant only listed “walking” as the cause of her injury and that appellant’s medical professionals provided different statements with regard to how the alleged injury occurred. OWCP provided a factual development questionnaire for her completion and afforded her 30 days to submit the requested information.

Appellant submitted additional medical information. No additional factual evidence was received.

By decision dated January 24, 2017, OWCP denied appellant’s claim, finding that she had not established fact of injury. It noted that she did not respond to its development questionnaire and did not provide any evidence to support that an injury occurred on October 27, 2016 as alleged. OWCP further noted that appellant had not submitted medical evidence establishing a diagnosed medical condition causally related to the alleged employment incident.

On March 28, 2017 appellant requested reconsideration. In support of her claim, she submitted progress notes from Dr. Wiley Jenkins, a Board-certified orthopedic surgeon, dated November 29 and December 27, 2016 and January 31, 2017; a physical therapy note dated December 15, 2016; and an October 27, 2016 report from the Emergency Department at Littleton Adventist Hospital.

By decision dated April 17, 2017, OWCP denied appellant’s request for reconsideration without considering the merits of her claim. It determined that the evidence submitted by appellant was irrelevant or immaterial to the issue, and noted that she had not submitted a detailed statement as to how the injury occurred and the date of the injury.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ When a claimant fails to meet one

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim.

Appellant did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by OWCP. 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).

Appellant submitted medical evidence on reconsideration. As her claim was initially denied due to failure to establish an employment incident, the evidence submitted on reconsideration must address that specific issue.⁶ The medical evidence submitted on reconsideration was not relevant to the underlying issue which is factual in nature. Appellant's claim was denied because she did not provide adequate evidence in support of an employment incident. On her claim form, she only indicated that her injury occurred due to "walking." Appellant did not respond to OWCP's request for additional information with regard to how the alleged incident occurred.

As previously noted, in order to require OWCP to reopen a case for merit review, appellant must show that OWCP erroneously applied or interpreted a specific point of law, advance a new relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered by OWCP.⁷

Accordingly, pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).⁸

CONCLUSION

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

⁵ *Id.* at § 10.608(b).

⁶ *M.N.*, Docket No. 17-0737 (issued September 18, 2017).

⁷ *See D.M.*, Docket No. 16-1754 (issued January 10, 2018).

⁸ *M.S.*, Docket No. 16-1235 (issued August 9, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2017 is affirmed.

Issued: April 12, 2018
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