

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

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M.C., Appellant )  
and ) Docket No. 17-0024  
DEPARTMENT OF VETERANS AFFAIRS, )  
JESSE BROWN VETERANS AFFAIRS ) Issued: March 22, 2018  
MEDICAL CENTER, Chicago, IL, Employer )  
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)

*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 7, 2016 appellant filed a timely appeal from a May 31, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated February 18, 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 over the merits of this claim.

**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.*

### **FACTUAL HISTORY**

On January 6, 2016 appellant, then a 48-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging, on that date, she injured her right knee when a patient pushed her and she fell. She stopped work on January 6, 2016 and returned to work several days later on January 8, 2016. No evidence was submitted with the claim. The employing establishment controverted the claim, contending that the incident did not occur as alleged.

In a January 14, 2016 development letter, OWCP advised appellant of the deficiencies in her claim and requested that she submit factual and medical evidence, including a rationalized opinion from her physician explaining how the January 6, 2016 incident caused or contributed to a diagnosed condition. Appellant was afforded 30 days to submit the requested information.

Appellant submitted a February 1, 2016 e-mail in which she related that a patient had pushed her hard enough on the shoulder to cause her to fall. She explained that she was standing in a doorway when the incident occurred and she fell into the hallway.

OWCP received a January 6, 2016 progress note from a registered nurse, as well as a January 7, 2016 return to work slip, which was signed by a medical assistant.

In a January 7, 2016 note, a physician with an illegible signature related that appellant experienced right knee pain after fall at work on January 6, 2016.

OWCP also received letters dated January 14 and 15, 2016 from the employing establishment further controverting appellant's claim.

By decision dated February 18, 2016, OWCP denied appellant's claim, finding that she had not submitted medical evidence which provided a diagnosis causally related to the accepted January 6, 2016 employment incident.

On March 7, 2016 appellant requested reconsideration and indicated that she was submitting medical evidence with a diagnosis of swelling of the right knee, which had been omitted from prior medical documentation.

OWCP received a duplicate copy of a January 7, 2016 return to work slip. It also received a January 7, 2016 note, in which the physician with an illegible signature, noted swelling of appellant's right knee joint from a January 6, 2016 fall at work.

By decision dated May 31, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that the evidence submitted was cumulative and thus substantially similar to evidence already of record and previously considered.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> 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.<sup>3</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>6</sup> He or she need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>7</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>8</sup>

## **ANALYSIS**

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

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.<sup>9</sup>

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether appellant has submitted sufficient evidence of a medical diagnosis causally related to the accepted employment incident.

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<sup>2</sup> Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

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

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>7</sup> See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>8</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>9</sup> See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

With her reconsideration request, appellant submitted a duplicate copy of the January 7, 2016 return to work slip, which was previously considered and, thus, properly considered cumulative evidence.<sup>10</sup>

Appellant also submitted another January 7, 2016 note from the physician with an illegible signature which noted swelling of right knee joint from her January 6, 2016 fall at work. This physician had previously reported that appellant experienced right knee pain on January 6, 2016. While this report was new, it did not provide relevant pertinent evidence. Swelling is another symptom, not a diagnosis.<sup>11</sup> This report is therefore irrelevant as it does not address whether a medical diagnosis was causally related to the accepted employment incident.<sup>12</sup>

A claimant may also be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in support of her request for reconsideration.

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).

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<sup>10</sup> See *Patricia G. Aiken*, 57 ECAB 441 (2006).

<sup>11</sup> See D.A., Docket No. 17-0816 (issued July 24, 2017).

<sup>12</sup> See M.N., Docket No. 17-0737 (issued September 18, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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