

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

C.A., Appellant	)	
	)	
and	)	<b>Docket No. 18-0489</b>
	)	<b>Issued: September 6, 2018</b>
<b>U.S. POSTAL SERVICE, WICKER PARK STATION, Chicago, IL, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 5, 2018 appellant filed a timely appeal from a November 13, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of OWCP dated May 12, 2017, 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 this case.<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 record provided the Board includes evidence received after OWCP issued its November 13, 2017 decision. The Board's jurisdiction is limited to the evidence of record that was before OWCP at the time it issued its final decision. As such, the Board is precluded from considering this newly submitted evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On September 7, 2016 appellant, then a 53-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging a left knee injury due to years of excessive walking on concrete and ascending and descending stairs while in the performance of her federal employment. She alleged that she first realized that her left knee condition was caused or aggravated by her federal employment on July 5, 2016. Appellant did not note a date on which she first became aware of her left knee condition. She stopped work on July 6, 2016.<sup>3</sup>

In support of her claim, appellant submitted a July 5, 2016 note by Dr. James A. Hill, a Board-certified orthopedic surgeon, indicating that appellant suffered from a torn left medial meniscus, and that she was unable to work until further notice.

By development letter dated September 28, 2016, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It also requested appellant to complete a questionnaire regarding the factual aspects of her claim. OWCP afforded her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated December 2, 2016, OWCP denied appellant's claim. It determined that appellant had not established that the events occurred as alleged. OWCP also noted that, while her physician provided a diagnosis, no medical evidence was submitted that established a connection between appellant's diagnosed left knee condition and the events alleged.

In medical reports dated December 20, 2016 and January 31, 2017, Dr. Hill noted that appellant was complaining of discomfort in her left knee. He noted that appellant returned to work in a light-duty status which she alleged aggravated her right knee. Dr. Hill opined that appellant had a torn left medial meniscus with degenerative changes in addition to her post-traumatic arthritis of the right knee.

On February 16, 2017 OWCP received appellant's request for reconsideration. Appellant submitted responses to OWCP's questionnaire and described her work duties.

By decision dated May 12, 2017, OWCP determined that the evidence of record established the factual portion of the case, but that the claim remained denied because the medical evidence submitted was insufficient to establish that a medical condition had been diagnosed in connection with the established events. It noted that, although Dr. Hill had diagnosed a torn left medial meniscus, he failed to provide a discussion of the employment factors he believed contributed to or caused her left knee condition. Accordingly, OWCP found that, while the evidence was sufficient to modify the decision from a denial based on the factual component of the basic elements, the claim remained denied for insufficient medical evidence.

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<sup>3</sup> On March 9, 2015 appellant filed a Form CA-2 alleging a right knee injury causally related to factors of her federal employment. OWCP assigned this claim File No. xxxxxx889 and accepted the claim for tear of the right medial meniscus.

On August 15, 2017 OWCP received appellant's request for reconsideration. Appellant contended that OWCP had accepted her claim for a right knee condition, and that she was now experiencing pain in her left knee.

By decision dated November 13, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128 of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation either under its own authority or on application by a claimant.<sup>4</sup> Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>5</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contained evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

### **ANALYSIS**

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).

The underlying issue in this case is causal relationship, which must be established by medical evidence.<sup>8</sup> In support of her request for reconsideration, appellant alleged that because OWCP had accepted her claim for a right knee condition, her claim for left knee injury should also be accepted. Appellant's honest belief that her employment duties caused her injury, no matter how sincerely held, does not constitute medical evidence necessary to establish causal relationship.<sup>9</sup> The Board finds that appellant's assertion does not show a legal error by OWCP or constitute a new and relevant legal argument. Accordingly, appellant 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).

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<sup>4</sup> *Id.* at § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.608(a).

<sup>6</sup> *Id.* at § 10.605(b)(3).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *M.A.*, Docket No. 18-0395 (issued July 17, 2018).

<sup>9</sup> *T.O.*, Docket No. 17-0093 (issued March 22, 2018).

A claimant may obtain a merit review of an OWCP decision by submitting relevant and pertinent new evidence not previously considered. In this case, appellant failed to submit relevant and pertinent new evidence addressing how her medical diagnosis and its causal relationship to support her claim.<sup>10</sup>

Accordingly, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument not previously considered, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>11</sup>

### **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 decision of the Office of Workers' Compensation Programs dated November 13, 2017 is affirmed.

Issued: September 6, 2018  
Washington, DC

Christopher J. Godfrey, 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

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<sup>10</sup> *D.S.*, Docket No. 17-0839 (issued October 12, 2017).

<sup>11</sup> *S.J.*, Docket No. 17-1798 (issued February 23, 2018).