

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

G.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wisconsin Rapids, WI, Employer**

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**Docket No. 15-1076
Issued: July 24, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 13, 2015 appellant filed a timely application for review from a March 5, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from April 14, 2014, the date of the most recent merit decision of OWCP, 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 to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant argues that she submitted new evidence with her request for reconsideration.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 18, 2014 appellant, then a 48-year-old city mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date, she sustained an injury to her upper back, right shoulder, and right arm as a result of slipping on ice and landing on her back. A supervisor wrote "Medical received with [Form] CA-1" in the space on the form devoted to an explanation of the employing establishment's controversial of continuation of pay.

Appellant submitted a February 18, 2014 duty status report signed by Dr. Dong Joon Chung, Board certified in family medicine dated February 18, 2014 noting that she was completely incapacitated for work. She submitted a medical report from the same date from Dr. Chung, in which he examined a thoracic spine x-ray, which was within normal limits. Appellant also submitted follow-up reports from Dr. Chung dated February 21 and 25, 2014.

By letter dated March 7, 2014, OWCP informed appellant of the evidence necessary to establish her claim. It noted that she had not submitted sufficient medical evidence to establish fact of injury.

On March 10, 2014 Dr. Chung examined appellant and assessed her with neck and upper back pain with muscle spasm after a falling injury. In a follow-up report dated March 18, 2014, he diagnosed her with myofascial pain syndrome with spasm on the mid thoracic and lower cervical areas. Dr. Chung noted that appellant would return to full duty on March 24, 2014.

In another report dated March 18, 2014, Dr. Chung stated:

"The patient did not have any baseline back or neck problems and, therefore, the fall injury that happened on February 18, 2014, was the only reason for new development of neck and mid-back pain and spasm. With the medical and physical therapy the conditions are gradually improving and that also indicates that the cause of the problem was acute and from the work-related injury. In conclusion, [appellant's] condition developed after a fall injury that happened February 18, 2014, and there were no predisposing conditions for her discomfort."

He diagnosed contusion injury of the mid thoracic and lower cervical area with the component of whiplash and muscle spasm, and tendinitis.

By decision dated April 14, 2014, OWCP denied appellant's claim for compensation. It found that she had not submitted sufficient evidence to establish a medical diagnosis and causal relationship between the alleged medical condition and the work incident.

Subsequently, appellant submitted reports from physical therapists dated from March 4 through April 17, 2014. She also resubmitted the reports of Dr. Chung dated from February 18 through March 18, 2014.

On February 3, 2015 appellant requested reconsideration of OWCP's April 14, 2014 decision.

By decision dated March 5, 2015, OWCP declined appellant's request for reconsideration without reviewing the merits of her case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), 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.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁶

ANALYSIS

OWCP issued an April 14, 2014 decision finding that appellant had not established a traumatic injury in the performance of duty on February 18, 2014. On February 3, 2015 appellant requested reconsideration of this decision.

As noted above, the Board does not have jurisdiction over the merits of the April 14, 2014 decision. 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 her claim. In her February 3, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered. 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).

The underlying issue is whether appellant met her burden of proof to establish a traumatic injury. A claimant may be entitled to a merit review by submitting new and relevant evidence,

² 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

³ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁴ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁶ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

but appellant did not submit any new and relevant evidence in this case. With her request, appellant submitted records of physical therapy sessions dated from March 4 through April 17, 2014. These documents, while not previously considered by OWCP, are irrelevant to the underlying issue of her burden of proof to establish a traumatic injury in the performance of duty, as they are not signed by a physician and therefore do not constitute probative medical evidence.⁷

The reports of Dr. Chung dated from February 18 through March 18, 2014 were duplicative of reports previously of record and had already been considered in OWCP's April 14, 2014 decision. Therefore, these reports also did not constitute a basis for reopening her claim for consideration of the merits.⁸ While appellant argues on appeal that she submitted new medical evidence from a physician upon reconsideration, this evidence does not appear in the case record.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3).

CONCLUSION

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

⁷ See *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000).

⁸ See *Roger W. Robinson*, 54 ECAB 846 (2003). Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2015 is affirmed.

Issued: July 24, 2015
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