

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

T.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 13-837
Issued: July 17, 2013**

Appearances:

Ricardo A. Byron, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through his attorney, filed a timely appeal from an October 2, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his reconsideration request. Because more than 180 days elapsed from the most recent merit decision dated September 29, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case¹ pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

¹ An appeal of a final adverse OWCP decision issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 6, 2004 appellant, then a 38-year-old letter carrier, filed a claim for injury to his left knee and right side as a result of being chased by a dog that day. He jumped on a car and landed on his right side and hit his knee. Appellant returned to work on November 8, 2004. OWCP accepted the claim for lumbar strain and left knee contusion and paid benefits. Appellant worked at restricted duty and was released to full-time full duty on or about November 24, 2004; but retired on disability as of that date.

On June 27, 2008 appellant filed a recurrence of disability claim alleging that he sustained a consequential back condition as a result of the November 6, 2004 work incident. By letter dated March 13, 2009, OWCP requested that he provide additional factual and medical evidence. No new evidence was submitted.

By decision dated May 14, 2009, OWCP denied the recurrence claim finding that the evidence was not sufficient to establish a consequential injury sustained due to the November 6, 2004 injury.

Appellant requested reconsideration on May 6, 2010. He submitted an October 15, 2009 medical report from Dr. Guy M. Lee, a Board-certified orthopedic surgeon, who attributed the claimed herniated disc condition as a consequence of the 2004 work injury. Dr. Lee stated that when a patient sustained an injury to the lumbar spine damage could be done to the disc.

By decision dated July 16, 2010, OWCP denied modification of its prior decision. It found the medical evidence was insufficient to establish that appellant sustained a lumbar herniation as a result of the November 6, 2004 work injury. The medical evidence did not provide sufficient medical rationale based on an accurate and factual medical background.

On July 1, 2011 appellant requested reconsideration and submitted additional factual and medical evidence. This included an April 15, 2011 report from Dr. Lee, which an OWCP medical adviser reviewed along with the medical evidence of record.

By decision dated September 29, 2011, OWCP denied modification of the prior decision.

On September 28, 2012 appellant, through his attorney, requested reconsideration. He argued that Dr. Lee's reports provide sufficient medical reasoning to explain how the initial incident caused or contributed to the claimed herniation and demonstrated his knowledge of the mechanism of appellant's injury. No new factual evidence or medical reports were submitted.

In an October 2, 2012 nonmerit decision, OWCP denied appellant's request for reconsideration finding that the evidence submitted was duplicative of that previously considered.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ OWCP's regulations provide that 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 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.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁶ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

Appellant disagreed with OWCP's September 29, 2011 decision which affirmed the denial of his claim for recurrence of disability. The Board does not have jurisdiction to review the merits of the case. The sole issue is whether appellant's request for reconsideration met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

Appellant did not identify a specific point of law or show that OWCP erroneously applied or misinterpreted. He also did not advance a new and relevant legal argument. In his September 28, 2012 request for reconsideration, appellant reiterated arguments previously made before OWCP. He contended that Dr. Lee's reports were sufficient to establish that his herniated disc arose out of the November 6, 2004 work incident. This is the same argument appellant made before OWCP on several occasions, which was addressed in the July 16, 2010 and September 29, 2011 decisions. He did not submit new factual evidence or medical reports which were not previously considered prior to the September 29, 2011 decision. Thus appellant has not shown that OWCP erroneously applied or interpreted a specific point of law and he has not advanced a relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP, but appellant submitted no such evidence with his

³ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009). *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁷ *Id.* *See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

reconsideration request. Thus, the Board finds that he did not meet the regulatory requirements and is not entitled to further merit review.⁸

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant argues that the medical evidence supports his claim. The Board noted above that it only has jurisdiction over OWCP's October 2, 2012 nonmerit decision which denied his request for reconsideration and therefore is precluded from conducting a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *L.H.*, 59 ECAB 253 (2007).