

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

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**Docket No. 13-880
Issued: July 26, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2013 appellant filed a timely appeal from an October 12, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. As more than 180 days has elapsed from the date of the last merit decision on June 6, 2012, to the filing of this appeal on March 4, 2013, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP properly denied appellant's July 10, 2012 claim for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the October 12, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

This case was previously before the Board.³ By decision dated June 6, 2012, the Board affirmed a September 6, 2011 OWCP merit decision which denied appellant's traumatic injury claim, finding insufficient medical evidence to establish causal relationship between the diagnosed conditions and the July 18, 2011 employment incident. The facts of the case, as set forth in the prior decision, are hereby incorporated by reference.

On July 10, 2012 appellant submitted a request for reconsideration and resubmitted affidavits from himself and Dr. Laurence E. Mermelstein, a Board-certified orthopedic surgeon. He also submitted a July 6, 2012 report from Dr. Aretha Persaud-Mancusi, a Board-certified family practitioner, who indicated that appellant was seen on June 29, 2011 for a visit that was unrelated to the July 18, 2011 injury, an August 4, 2011 magnetic resonance imaging (MRI) scan, and an August 8, 2011 report from Dr. Mermelstein, who diagnosed lumbar disc displacement without myelopathy, thoracic/lumbar radiculopathy and lumbar stenosis.

By decision dated October 12, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was not sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP regulations provide that it may review an award for or against compensation at any time on its own motion or upon application.⁵ The employee shall exercise his or her right through a request to the district OWCP.⁶

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by it or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷

³ Docket No. 12-216 (issued June 6, 2012). On July 25, 2011 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim alleging that on July 18, 2011 he sustained lower back, left hip and left leg injuries as a result of reaching back to retrieve a package while sitting in a truck. By decision dated September 6, 2011, OWCP denied the claim on the basis that the evidence was insufficient to establish causal relationship between the diagnosed conditions and the employment incident.

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.*

⁷ 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁸ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

As noted above, the decision of June 6, 2012 reviewed OWCP's September 6, 2011 merit decision. In this appeal, the only decision the Board may review is the October 12, 2012 OWCP nonmerit decision denying appellant's request for reconsideration. The issue is whether his request met at least one of the three requirements for obtaining a merit review. The Board finds that appellant's July 10, 2012 request for reconsideration did not satisfy any of the requirements of 20 C.F.R. § 10.606(b).

Along with his request for reconsideration, appellant submitted affidavits from himself and Dr. Mermelstein, an August 4, 2011 MRI scan and an August 8, 2011 report from Dr. Mermelstein. The Board finds that these documents and reports are cumulative and duplicative of the factual and medical evidence previously submitted. Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ These reports, therefore, are insufficient to warrant further merit review.

Appellant also submitted a July 6, 2012 report from Dr. Persaud-Mancusi who indicated that appellant was seen on June 29, 2011 for a visit that was unrelated to the July 18, 2011 injury. The Board finds that submission of this report did not require reopening appellant's case for merit review as it fails to provide rationalized medical opinion evidence addressing the issue of causal relationship, which was the issue before OWCP. Therefore, it does not constitute relevant and pertinent new evidence and is not sufficient to require OWCP to reopen the claim for consideration of the merits.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by it; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP. Thus, OWCP did not abuse its discretion in refusing to reopen his claim for a review of the merits.

⁸ 20 C.F.R. § 10.607(a).

⁹ *Id.* at § 10.608(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *See Howard A. Williams*, 45 ECAB 853 (1994); *D.M.*, Docket No. 13-238 (issued April 4, 2013).

On appeal appellant argues the merits of his case. The Board noted above that it only has jurisdiction over OWCP's October 12, 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 July 10, 2012 claim for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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