

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

M.F., Appellant

and

**U.S. POSTAL SERVICE, PEN ARGYL POST
OFFICE, Pen Argyl, PA, Employer**

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**Docket No. 13-615
Issued: May 22, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2013 appellant filed a timely appeal of the November 9, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than 180 days elapsed from the most recent merit decision dated July 9, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case pursuant to the Federal Employees' Compensation Act¹ (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 her claim pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that she continues to suffer residuals from her employment injury and requests further treatment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on August 23, 2010 appellant, then a 43-year-old city carrier, sustained a sprain of the calcaneofibular ligament of the left ankle while in the performance of duty. On September 3, 2010 Dr. Raymond E. McCarroll, an attending podiatrist, released her to return to modified activity. On October 5, 2010 he released appellant to return to unrestricted activity. On November 12, 2010 she returned to full-duty work. On December 13, 2010 Dr. McCarroll discharged appellant from his care.

On July 19, 2011 appellant filed a claim for a recurrence of a medical condition related to her August 23, 2010 employment injury. She did not stop work and listed the date of the recurrence as July 19, 2011. Appellant stated that, following her return to work after the original injury, her pain never went away. She returned to her physician for an x-ray every couple of months. Appellant submitted medical reports dated October 22, 2010 through May 13, 2011 from Dr. McCarroll which addressed her left ankle and lumbar conditions and physical capacity.

In a September 13, 2011 decision, OWCP denied appellant's recurrence claim. The medical evidence of record was found insufficient to establish that her current left ankle condition was causally related to her accepted August 23, 2010 employment-related injury.

In an undated letter, appellant requested reconsideration and submitted medical evidence which addressed her left ankle and lumbar conditions.

In a February 3, 2012 decision, OWCP denied modification of the September 13, 2011 decision. The medical evidence was insufficient to establish that appellant sustained a recurrence of her accepted August 23, 2010 employment-related injury.

On April 5, 2012 appellant requested reconsideration and submitted additional medical evidence which addressed her left ankle condition and need to undergo surgery.

On June 19, 2012 an OWCP medical adviser reviewed appellant's medical record. He opined that neither the proposed surgery nor further treatment was necessary. The medical adviser concluded that appellant could perform full active-duty work with no restrictions.

In a July 9, 2012 decision, OWCP denied modification of the February 3, 2012 decision, finding that the medical evidence was insufficient to establish that appellant's current left ankle condition and proposed surgery were causally related to her accepted work injury.

On August 10, 2012 appellant requested reconsideration and submitted an undated x-ray film and an April 1, 2011 x-ray film.

In a November 9, 2012 decision, OWCP denied appellant's request for reconsideration on the grounds that she neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of the FECA,² OWCP's regulation 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.³ 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.⁴ 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.

ANALYSIS

On August 10, 2012 appellant disagreed with OWCP's July 9, 2012 decision finding that she did not sustain a recurrence of a medical condition commencing July 19, 2011 that necessitated surgery due to the accepted August 23, 2010 employment-related left ankle injury. She requested reconsideration. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a new and relevant legal argument not previously considered.

The Board further finds that appellant also did not submit relevant and pertinent new evidence not previously considered. The undated x-ray film and April 1, 2011 x-ray film, while new, do not contain any opinion addressing whether appellant's current left ankle condition and the proposed surgery are causally related to the accepted employment injury. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵ Thus, the Board finds that the x-ray films were insufficient to warrant further merit review of appellant's claim.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to the requirements under section 10.606(b)(2). OWCP properly denied her August 10, 2012 request for reconsideration.⁶

On appeal, appellant contended that she continues to suffer residuals from her employment injury and requested further treatment. For reasons stated, the Board finds that the evidence submitted by appellant in support of her request for reconsideration is insufficient to warrant further merit review.

² 5 U.S.C. §§ 8101-8193. 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).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

⁶ *Robert E. Cullison*, 55 ECAB 570 (2004); *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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