

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

A.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Toledo, OH, Employer**

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**Docket No. 14-416
Issued: June 26, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 17, 2013 appellant filed a timely appeal of an October 31, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration of the merits of her claim. As more than 180 days elapsed from the issuance of the last merit decision to the filing of this appeal, the Board has no jurisdiction over 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 refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant generally asserts that the medical evidence establishes her claim.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In decisions dated October 2, 1998 and January 2, 2001, the Board found that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability.² In a May 23, 2002 decision, the Board found that OWCP properly refused to reopen her case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).³ In a January 26, 2004 decision, the Board found that OWCP properly refused to reopen appellant's case for further review of the merits on the grounds that her reconsideration request was not timely filed and failed to establish clear evidence of error.⁴ On August 4, 2005 the Board found that the record before the Board was incomplete and remanded the case to OWCP for proper assemblage.⁵ In decisions dated July 3, 2006, September 5, 2007, February 17, 2009, December 7, 2010 and August 6, 2012, the Board found that OWCP properly refused to reopen appellant's case for further consideration pursuant to 5 U.S.C. § 8128(a).⁶ The facts of the previous Board decisions are incorporated herein by reference.

On August 1, 2013 appellant submitted a form appeal request form, indicating that she was requesting reconsideration. Attached was a Board AB-1 appeal form in which she stated that the August 6, 2012 Board decision was contrary to the facts and the law. Appellant asserted that OWCP did not meet the requirements of section 10.110(c) of its regulations.⁷

In a nonmerit decision dated October 31, 2013, OWCP denied appellant's reconsideration request. It noted that section 10.110 of the Code of Federal Regulations (C.F.R.) relates to employers' responsibilities and found that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Section 8128(a) 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.⁸ Section 10.608(a) of OWCP's regulations provide that a timely

² Docket No. 99-2541 (issued January 2, 2001); and Docket No. 97-631 (issued October 2, 1998) respectively. In the October 2, 1998 decision, the Board adopted an October 1, 1996 decision of an OWCP hearing representative. The January 2, 2001 decision is the last merit decision in this case. On April 7, 1993 appellant, a letter carrier, sustained an acute lumbosacral strain and right knee strain due to a fall at work. She began limited-duty work and was terminated by the employing establishment effective June 3, 1993. Appellant thereafter claimed a recurrence of disability.

³ Docket No. 01-2130 (issued May 23, 2002).

⁴ Docket No. 03-2088 (issued January 26, 2004).

⁵ Docket No. 05-620 (issued August 4, 2005).

⁶ Docket No. 12-806 (issued August 6, 2012); Docket No. 10-1111 (issued December 7, 2010); Docket No. 08-2013 (issued February 17, 2009); Docket No. 07-1126 (issued September 5, 2007); and Docket No. 05-1966 (issued July 3, 2006), respectively.

⁷ There is no indication that the AB-1 form was forwarded to the Board.

⁸ 5 U.S.C. § 8128(a).

request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁹ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain 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.¹⁰ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS

The only decision before the Board is the nonmerit October 31, 2013 decision of OWCP denying appellant's application for review. Because there is no merit decision within 180 days of the appeal, the Board lacks jurisdiction to review the merits of her claim.

The Board finds that appellant's assertion that OWCP erroneously applied or interpreted a point of law is insufficient to require OWCP to reopen her claim for merit review. Appellant's reliance on 20 C.F.R. § 10.110 of OWCP's regulations has no merit because that section generally describes the responsibilities of the employer when a claim is filed. It is not relevant to the underlying merit issue in this case, which is whether she established a recurrence of disability.¹² As the argument submitted does not address the merits of this case, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b)(2).¹³

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP, it properly denied her reconsideration request.

⁹ 20 C.F.R. § 10.608(a).

¹⁰ *Id.* at § 10.608(b)(1) and (2).

¹¹ *Id.* at § 10.608(b).

¹² *Id.* at § 10.110. When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. *J.F.*, 58 ECAB 124 (2006); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ 20 C.F.R. § 10.606(b)(2); *see R.M.*, 59 ECAB 690 (2008).

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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