

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

L.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charleston, WV, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-2158
Issued: March 7, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2013 appellant filed a timely appeal from an August 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for further merit review. As more than 180 days elapsed from the last merit decision of August 2, 2012 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 over the merits of this claim.

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).

FACTUAL HISTORY

On December 6, 2011 appellant, then a 47-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that his back condition was caused or aggravated by factors

¹ 5 U.S.C. § 8101 *et seq.*

of his employment which included constant lifting, bending, stooping and other carrier duties. He indicated that he became aware of his condition on November 1, 2003 and realized it was caused or aggravated by factors of his employment on November 20, 2011. Appellant submitted a December 6, 2011 statement describing his employment duties, a copy of his position description, a December 6, 2011 report from Dr. Jonathan Carmouche, a Board-certified orthopedic surgeon, and x-ray results dated December 6, 2011.

By letter dated February 3, 2012, OWCP advised appellant of the deficiencies in the evidence and requested that he submit a medical report which contained a physician's well-rationalized opinion supported by objective evidence as to how his employment activities caused, contributed to or aggravated any diagnosed condition(s).

Appellant submitted additional medical reports which included a January 5, 2012 report from Dr. Murray E. Joiner, a Board-certified physiatrist, January 13, 2012 electromyogram and nerve conduction velocity studies and fluoroscopic procedure reports dated January 12 and 26, 2012.

By decision dated April 9, 2012, OWCP denied the claim on the grounds that the medical evidence did not establish that appellant sustained an injury that was causally related to his employment duties.

On May 7, 2012 appellant requested a review of the written record before an OWCP hearing representative. In a May 8, 2012 statement, he described his employment injuries sustained and alleged that those accidents also worsened his condition. Appellant noted that his doctor had placed him on light duty. However, the employing establishment did not put him on light duty but, instead, issued a letter of removal. No additional evidence was submitted.

On June 7, 2012 OWCP provided a copy of appellant's May 8, 2012 statement to the employing establishment and requested comments or a response within 20 days. However, no response was received from the employing establishment.

By decision dated August 2, 2012, an OWCP hearing representative affirmed the April 9, 2012 denial of appellant's claim.

In a September 27, 2012 letter, appellant requested reconsideration. He advised that he was forwarding copies of two doctor reports which he believed should satisfy the requirement for causal relationship between his position as a city mail carrier and his injury. However, no medical evidence was received.

By decision dated August 12, 2013, OWCP denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.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 on the merits.⁵

ANALYSIS

OWCP denied appellant's claim as it found that the medical evidence did not establish that appellant sustained a medical condition causally related to the accepted factors of his federal employment. On appeal, appellant asserts his belief that his entire medical record was not considered and makes various arguments that address the merits of his case. However, the last merit decision in this case was issued on August 2, 2012 at which time OWCP determined that none of the medical reports of record were sufficient to meet his burden of proof in establishing that his medical conditions are causally related to specific factors of his employment. As previously stated, this decision was issued over 180 days prior to the filing of this appeal and, accordingly, the Board does not have jurisdiction to review the merits of the case.⁶ The only issue before the Board is whether OWCP properly denied appellant's reconsideration request.

In his letter requesting reconsideration, appellant did not allege or show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant new argument not previously considered. Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

In support of his reconsideration request, appellant alleged that he was submitting additional documentation from physicians which support causal relationship. However, he did not identify the physicians, or the date of the reports and no additional evidence was submitted into the record. Thus, appellant did not submit relevant and pertinent new evidence not previously considered by OWCP and is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(2).

² 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)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at § 501.3(e).

Because appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP, it did not abuse its discretion in denying appellant's request for reconsideration.⁷

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁷ Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).