

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

P.C., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, OK, Employer**

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**Docket No. 09-2205
Issued: June 29, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 2, 2009 appellant filed a timely appeal from a May 28, 2009 nonmerit decision that denied his reconsideration request. Because more than 180 days have passed since the Office's last merit decision, dated February 13, 2009, and the filing of this appeal, dated September 2, 2009, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

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

¹ For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On November 6, 2007 appellant, a 68-year-old metallizing equipment operator, filed an occupational disease claim (Form CA-2) for hearing loss which, on March 14, 2008, the Office accepted.

Appellant submitted a July 30, 1996 note signed by Robert A. Shull, Captain, USAF, who is Chief of the Audiology Department at Tinker Air Force Base. He also submitted a July 30, 1996 report bearing an illegible signature.

By decision dated March 14, 2008, the Office accepted that appellant had sustained bilateral hearing loss causally related to his federal employment. It authorized appellant's purchase of hearing aids.

On June 24, 2008 appellant filed a schedule award claim.

By decision dated February 13, 2009, the Office accepted his schedule award claim but found that appellant's hearing impairment was not ratable.

On May 19, 2009 appellant requested reconsideration.

Appellant submitted a copy of Captain Shull's July 30, 1996 note, a copy of the July 30, 1996 report bearing an illegible signature and a copy of his occupational disease claim form.

By decision dated May 28, 2009, the Office denied his reconsideration request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office 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, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

ANALYSIS

Appellant's reconsideration request neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a merit review based on the first and second above-noted requirements under section 10.606(b)(2).

Concerning the third enumerated ground, submission of new relevant and pertinent evidence not previously considered by the Office, appellant submitted a copy of Captain Shull's July 30, 1996 note, a copy of the July 30, 1996 report bearing an illegible signature, and a copy of his occupational disease claim form. This evidence was already of record and considered by the Office in rendering its prior decisions. Evidence that duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case for further merit review.⁶

On appeal, appellant asserts that recently submitted evidence demonstrates that his hearing loss is "getting worse and worse." Because this evidence was not part of the record and considered by the Office when rendering its prior decisions, the Board may not consider it for the first time on appeal.⁷ Accordingly, this newly submitted evidence provides no basis for reopening appellant's claim for further merit review.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or submitted new, relevant and pertinent evidence not previously considered by the Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.⁸

CONCLUSION

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

⁶ *James W. Scott*, 55 ECAB 606 (2004).

⁷ 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

⁸ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board