

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

R.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 10-2393
Issued: July 12, 2011**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) September 22, 2010 nonmerit decision denying his request for reconsideration. Since more than 180 days elapsed since the most recent merit decision of September 17, 2009¹ to the filing of this appeal on September 28, 2010, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3.³

¹ The last merit decision of record following OWCP's May 12, 2008 decision denying appellant's emotional condition claim, is the Board's September 17, 2009 decision.

² 5 U.S.C. §§ 8101-8193.

³ For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. See 20 C.F.R. § 501.3(d)(2). For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits of his case under 5 U.S.C. § 8128.

FACTUAL HISTORY

This case has previously been before the Board. In a September 17, 2009 decision, the Board affirmed OWCP's May 12, 2008 decision denying appellant's emotional condition claim.⁴ The Board found appellant failed to establish any compensable employment factors. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On September 14, 2010 appellant requested reconsideration. He requested that OWCP send all documents in his case as his attorney and doctors would like to review the material. Appellant indicated that he would be submitting medical information in support of his claim. No additional evidence was received.

By decision dated September 22, 2010, OWCP denied appellant's reconsideration request on the grounds it did not raise substantive legal questions or include new and relevant evidence.⁵

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁶ 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.⁷ 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.⁸ When a claimant fails to

⁴ Docket No. 08-2102 (issued September 17, 2009).

⁵ The Board notes that OWCP issued a January 6, 2011 decision denying appellant's December 24, 2010 request for reconsideration on the basis it was untimely filed and failed to present clear evidence of error. As this decision was issued after appellant filed his appeal with the Board on September 28, 2010, and also pertains to whether OWCP should reopen the claim for a merit review, it is null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990); *R.T.*, Docket No. 08-408 (issued December 16, 2008). *See also* 20 C.F.R. § 501.2(c)(3).

⁶ 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 her own motion or on application. 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.607(a). OWCP's procedures provide that the one-year-time limitation period for requesting reconsideration begins on the date of the original OWCP decision. 20 C.F.R. § 10.607(a); *see A.F.*, 59 ECAB 714 (2008); *Alberta Dukes*, 56 ECAB 247 (2005). However, a right to reconsideration within one year also accompanies any subsequent merit decision on the issues including a merit decision of the Board. *D.G.*, 59 ECAB 455 (2008); *Robert F. Stone*, 57 ECAB 292 (2005).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁹

When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁰

ANALYSIS

Appellant's September 14, 2010 request for reconsideration did not allege, or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. While appellant stated he would be submitting medical information in support of his claim, no new evidence was received by the time OWCP issued its September 22, 2010 decision denying his request for reconsideration. Appellant's claim was denied on the basis he did not establish a compensable work factor. Thus, medical evidence would not be relevant to his claim where he had not yet established a compensable work factor.¹¹ Appellant did not submit any factual evidence relevant to a compensable employment factor. Consequently, he is not entitled to a review of the merits of his claim based on the above-noted requirements under section 10.606(b)(2).

On appeal, appellant contends that he never knew that he had a right to appeal the Board's September 17, 2009 decision as there was no letter with his appeal rights attached to the decision. A decision of the Board is final upon expiration of 30 days from the date of the decision.¹² Appellant did not file a petition for reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a).¹³ He also indicated that he called OWCP in relation to the matter. The record reflects that appellant called OWCP on September 10 and 16, 2010 in regard to his case and his appeal rights. On September 10, 2010 appellant notified OWCP about a change in address and was told to put it in writing. He also indicated that he wanted reconsideration and was told to put his request in writing. As noted, appellant timely requested reconsideration on September 14, 2010. For the above reasons set forth, appellant's reconsideration request was insufficient to warrant further merit review of his claim.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review pursuant to 5 U.S.C. § 8128(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *Annette Louise*, 54 ECAB 783 (2003).

¹¹ See *Garry M. Carlo*, 47 ECAB 299 (1996). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹² 20 C.F.R. § 501.6(d).

¹³ Claimants for compensation have constructive notice of the requirements of the implementing federal regulations due to its publication. See *John A. Butcher*, 42 ECAB 934 (1995).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 22, 2010 is affirmed.

Issued: July 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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