

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

P.M., Appellant

and

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

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**Docket No. 11-160
Issued: September 7, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 26, 2010 appellant filed a timely appeal from a July 8, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for further review of the merits of his claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the nonmerit decision by OWCP. The last merit decision of record was OWCP's August 13, 2009 decision. Because more than 180 days elapsed between the last merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On November 6, 2008 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed repetitive stress injury to both hands. He stated that his injury was caused by the repetitive motion from working all day with his hands and thumbs to while casing, pulling the mail down or delivering mail for the last 35 years. Appellant first became aware of his condition and of its relationship to his employment on October 22, 2008. He notified his supervisor on November 6, 2008.

In an undated narrative statement, appellant reported that he had joint pain in both thumbs. He explained that his duties as a letter carrier required continuous use of his hands for handling, sorting and delivering the mail and that pulling the mail down required thumb pressure. Appellant attached an article explaining a repetitive stress injury and a U.S. Postal Service job description for a letter carrier. He also submitted pictures which showed his various duties.

By letter dated November 13, 2008, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days. In a letter of the same date, OWCP also requested additional factual information from the employing establishment.

By letter dated November 18, 2008, the employing establishment stated that appellant's job required him to case and carry mail and parcels. Appellant worked in the office for approximately 1.5 to 2 hours every day and would deliver mail on the street for approximately 5 to 6 hours a day.

By letter dated November 20, 2008, appellant stated that his injury resulted from deterioration of the cartilage in the joints of his right and left thumbs. The cartilage had also worn out in his toes, requiring surgery which had been approved by OWCP under File No. xxxxxx203. Appellant stated that he had no previous injuries to his hands and that no activities outside his employment would have caused his condition. A copy of the USPS delivery carriers duties and responsibilities was also submitted.

By decision dated December 15, 2008, OWCP denied appellant's claim, finding that the evidence did not establish that the work exposures occurred as alleged and no medical evidence was submitted. Appellant did not establish that he sustained an injury.

By letter dated February 11, 2009, appellant requested reconsideration of OWCP's decision. He reported that he was first diagnosed with wrist arthritis and arthritis in both thumb joints in October 2005.

In a December 22, 2008 medical report, Dr. William E. Hooper, a Board-certified hand surgeon, reported that he first diagnosed appellant with wrist arthritis in October 2005 and treated him for a wrist fracture in 2007. Appellant's x-rays showed arthritic changes of both thumbs in the pantrapezial joints. After reviewing his history, job description, photographs of him handling mail and his knowledge of arthritis, Dr. Hooper opined that appellant's arthritis in

both wrists and thumbs was aggravated by his frequent handling of mail and by a right wrist fracture in 2007.

By decision dated March 3, 2009, OWCP found that the evidence established that the work activities occurred. It denied appellant's claim, however, on the grounds that the medical evidence was insufficient to establish causal relationship between his bilateral hand condition and the established work-related events.

By letter dated May 6, 2009, appellant requested reconsideration of OWCP's decision. In an April 24, 2009 letter, he explained that his injury was causally related to his employment factors.

By letter also dated April 24, 2009, Dr. Hooper opined that appellant's bilateral wrist arthritis was aggravated by his work activities including case handling and repetitive lifting activities.

In an April 27, 2009 medical report, Dr. Hooper diagnosed appellant with bilateral wrist arthritis stating that the condition resulted from years of repetitive strain. When asked if the condition was work related, he checked the box marked "yes."

By decision dated August 13, 2009, OWCP affirmed its March 3, 2009 decision finding that the evidence was insufficient to establish that the medical condition was related to the established work-related events.

By letter dated May 11, 2010, appellant requested reconsideration of OWCP's decision stating that all of the information he submitted was not evaluated because Dr. Hooper did not just check the box marked "yes" but also wrote that appellant's condition was caused by years of repetitive strain.

By decision dated July 8, 2010, OWCP denied appellant's request for reconsideration finding that he did not raise a substantive legal question or include any new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP 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 Section 10.608(b) of OWCP regulations provide that 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.⁴

³ *D.K.*, 59 ECAB 141 (2007).

⁴ *K.H.*, 59 ECAB 495 (2008).

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), was not an abuse of discretion.

The only decision before the Board on appeal is the July 8, 2010 OWCP decision, denying appellant's application for review. Because more than 180 days elapsed between the date of OWCP's most recent merit decision on August 13, 2009 and the filing of his appeal on October 26, 2010 the Board lacks jurisdiction to review the merits of his claim.⁵

The issue is whether appellant submitted relevant evidence not previously of record or advanced legal contentions not previously considered to establish causal connection between his work duties and his bilateral wrist and hand arthritis.

The Board finds that appellant did not meet any of the three requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his September 6, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new, relevant legal argument. He argued that all of the information he submitted must not have been evaluated in the August 13, 2010 merit decision because Dr. Hooper's April 27, 2009 report explained that his injury was employment related and caused by repetitive strain.

Appellant also contends on appeal that his repetitive strain occurred continuously during his entire shift for 35 years as he worked as a letter carrier. His belief that work caused his medical problem is not in question. Appellant did not submit any medical evidence with his request for reconsideration. The underlying issue in this case was whether his injury was causally related to the accepted employment-related events. That is a medical issue which must be addressed by relevant medical evidence.⁶ A claimant may obtain a merit review of OWCP's decision by submitting new and relevant evidence. In this case, appellant failed to submit any new or relevant medical evidence addressing causal relationship.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.⁷

⁵ 20 C.F.R. § 501.3(e) requires that an application for review by the Board be filed within 180 days of the date of OWCP's final decision being appealed.

⁶ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ Appellant may submit evidence or argument with a written request for reconsideration to OWCP pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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