

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

Z.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Glendale, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-1965
Issued: April 11, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2011 appellant filed a timely appeal of a June 24, 2011 decision of the Office of Workers' Compensation Programs (OWCP), denying her application for reconsideration without merit review of the claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the June 24, 2011 nonmerit decision. Since more than 180 days has elapsed between the last merit decision on December 22, 2010 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. § 501.3(e).

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim pursuant to 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 14, 2010 appellant, then a 48-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury in the performance of duty on September 8, 2010. She indicated that she picked up a parcel and felt a sharp pain in her back. The medical evidence submitted to the record included an attending physician's report (Form CA-20) dated September 14, 2010 from Dr. Behzad Emad, a physiatrist.

In a decision dated December 22, 2010, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On January 20, 2011 appellant requested a hearing before an OWCP hearing representative. A hearing was scheduled for April 29, 2011. The record contains a memorandum of telephone call dated April 18, 2011, indicating appellant had stated that she wanted to cancel the hearing and request reconsideration. Appellant was advised she must request a withdrawal of the hearing in writing. By letter dated April 26, 2011, she stated that she would not be able to attend the scheduled hearing. Appellant stated that she wanted the opportunity to submit additional documents and request reconsideration of her claim.

By letter dated May 11, 2011, OWCP advised appellant that her request to withdraw a hearing request had been accepted. It indicated that she could request reconsideration within one year of the December 22, 2010 decision and submit new evidence.

By decision dated June 24, 2011, OWCP denied the April 26, 2011 reconsideration request. It found the reconsideration request was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

Pursuant to 5 U.S.C. § 8128(a)² a claimant may submit an application to review an award for or against payment of compensation. OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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 evidence not previously considered by OWCP."³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

² 5 U.S.C. § 8128(a) provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS

In the present case, OWCP denied appellant's claim for a traumatic injury by decision dated December 22, 2010. The Board does not have jurisdiction over this decision and cannot review the merits of appellant's claim for compensation on this appeal. Although she had requested a hearing before an OWCP hearing representative, appellant withdrew her request and indicated that she wished to request reconsideration and submit additional evidence. As OWCP explained to appellant in its May 11, 2011 letter, a claimant has one year from the date of a merit decision to request reconsideration.

OWCP considered the April 26, 2011 letter to be a request for reconsideration. While appellant indicated that she intended to submit additional evidence, the record reflects that there was no evidence or argument submitted. In reviewing the above standards at 20 C.F.R. § 10.606(b)(2), appellant did not meet any of these requirements. She 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 by OWCP. The Board accordingly finds that OWCP properly determined that appellant was not entitled to a merit review of her claim for compensation.

On appeal, appellant indicated that she wanted to change her claim to an occupational claim Form CA-2 and submitted new evidence. The Board cannot consider new evidence on appeal, as it is limited to evidence that was before OWCP at the time of the final decision on appeal.⁵ Appellant may pursue her claim independently from the Board with same at OWCP in an appropriate manner.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

⁵ *Id.* at § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2011 is affirmed.

Issued: April 11, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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