

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

F.L., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, Los Angeles, CA,
Employer**

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**Docket No. 11-1981
Issued: April 19, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 22, 2011 appellant filed a timely appeal of a July 29, 2011 decision of the Office of Workers' Compensation Programs (OWCP), denying his 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 December 18, 2009 nonmerit decision. Since more than 180 days elapsed between the last merit decision of April 8, 2010 to 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 review of the merits under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 20, 2007 appellant, then a 43-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2007 he sustained injuries when a heavy box fell on him while in the performance of duty. OWCP accepted the claim for a neck sprain. Appellant returned to regular duty on June 20, 2007.

On November 2, 2009 appellant filed a claim for compensation (Form CA-7) commencing October 17, 2009. In a report dated February 11, 2010, Dr. Frank King, a physiatrist, stated that appellant's neck pain and headaches were directly related to his April 4, 2007 work injury. He also opined that all of appellant's treatment and recommended procedures were directly related to the work injury.

By decision dated April 8, 2010, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish a recurrence of disability commencing October 17, 2009.

Appellant submitted reports from Dr. King regarding treatment for neck pain. In an April 8, 2010 report, Dr. King stated that appellant could return to work full time with restrictions. In a November 24, 2010 report, he diagnosed chronic neck pain, left cervical radiculitis with worsening symptoms and history of depression. By report dated February 17, 2011, Dr. King indicated that appellant was working full-time regular duty.

By letter dated February 18, 2011, appellant requested reconsideration of his claim. He stated that on October 16, 2009 he had been hospitalized for an overdose of prescription medications, as he had mistakenly taken a double dosage of medication. Appellant stated that he was placed on a no work status as of October 19, 2009. According to him, his physician had made numerous requests for medical procedures and OWCP had not responded. Appellant listed his current medications. Following his request for reconsideration, he submitted additional reports from Dr. King dated March 31, May 12 and June 22, 2011 regarding continuing treatment.

In a decision dated July 29, 2011, OWCP denied the reconsideration request without merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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

² 5 U.S.C. § 8128(a) (providing 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).

requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

The only decision before the Board on this appeal is the July 29, 2011 OWCP decision. This decision did not review the merits of the claim for compensation commencing October 17, 2009. In this regard, it is noted that the July 29, 2011 decision contains some incorrect statements that should be clarified by the Board. OWCP stated that appellant had not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a new and relevant legal argument or submitted relevant and pertinent new evidence “that would alter the decision” by OWCP. That is not the standard provided in 20 C.F.R. § 10.606(b)(2). A claimant does not have to submit new evidence that would alter OWCP decision to receive a merit review. The evidence must be relevant, pertinent and not previously considered by OWCP. In addition, the concluding statement of the July 29, 2011 decision was that the reconsideration request should be denied because the medical evidence was not sufficient to show disability commencing October 17, 2009. This explanation would be relevant only if OWCP had reviewed the merits of the claim. In reviewing the July 29, 2011 decision, there is no indication that OWCP had reviewed the merits of the claim. There is no mention, for example, of any specific medical report submitted after the April 8, 2010 merit decision or discussion of its probative value regarding the underlying issue of compensation commencing October 17, 2009. The July 29, 2011 decision stated that it did not review the merits of the claim and the Board finds that it does not constitute a merit review.

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) that would require OWCP to review the merits of the claim for compensation. The February 18, 2011 letter did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not discuss a specific point of law in his reconsideration request. With respect to advancing a relevant legal argument not previously considered by OWCP, he did not meet this standard. Appellant generally expressed his unhappiness with OWCP’s handling of his claim and listed his medications, without providing a new and relevant legal argument.

The underlying issue in the claim for compensation commencing October 17, 2009 is a medical issue. OWCP denied the claim for compensation on the grounds the medical evidence was insufficient. But the medical evidence of record submitted after the merit decision does not provide any new or relevant information on the issue. Dr. King provided the results on a current examination but did not discuss the issue of disability on or after October 17, 2009 or its relationship to the employment injury. His February 11, 2010 report had briefly opined that appellant’s condition was employment related and this report was before OWCP at the time of the April 8, 2010 merit decision. None of Dr. King’s subsequent reports or any other medical evidence submitted after April 8, 2010 discussed the medical issue presented in the case.

The Board finds that appellant did not meet the requirements for a merit review of his claim. 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 by OWCP. Since he did not meet any of the

⁴ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

requirements of 20 C.F.R. § 10.606(b)(2), OWCP properly found that he was not entitled to a review of the merits of his claim for compensation.

On appeal, appellant refers to the medical evidence, noting a statement in the July 29, 2011 OWCP decision. But the reference to specific medical evidence in the July 29, 2011 decision was with regard to a history of the case and evidence that had been submitted and reviewed by OWCP in the April 8, 2010 merit decision. The Board does not have jurisdiction over the merits of the claim for disability commencing October 17, 2009 causally related to the April 4, 2007 injury. The only issue was whether appellant was entitled to a review of the merits and for the reasons stated above, he did not establish entitlement to a merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2011 is affirmed.

Issued: April 19, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees Compensation Appeals Board