

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

G.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-2068
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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On September 22, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) July 27, 2011 nonmerit decision denying her request for merit review. 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 nonmerit decision. The last merit decision of OWCP was issued on March 21, 2011. The Board lacks jurisdiction to review the merits of this claim.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² For final adverse 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). To be timely filed, the appeal needed to be filed by September 17, 2011.

FACTUAL HISTORY

Appellant's February 3, 2005 traumatic injury claim was accepted for lumbar strain; displacement of thoracic intervertebral disc without myelopathy; and closed dislocation of lumbar vertebrae. On June 8, 2006 she filed a claim for total disability for the period February 11, 2005 to May 26, 2006.

In a May 3, 2010 decision, OWCP denied appellant's claim for benefits. On May 14, 2010 appellant requested an oral hearing. In support of her request, she submitted medical evidence, including a June 5, 2005 Form CA-20 from her attending physician, Dr. Augustine W. Lewis, III, a Board-certified family practitioner, reflecting his opinion that she was totally disabled beginning January 28, 2004. In an August 9, 2010 report, Dr. Lewis stated that appellant was disabled at the time of her resignation from the employing establishment on February 11, 2005.

In a September 20, 2010 decision, an OWCP hearing representative affirmed the May 3, 2010 decision on the grounds that the medical evidence was insufficient to establish that appellant was disabled during the claimed period due to the accepted employment injury.

On December 20, 2010 appellant requested reconsideration. She submitted a November 29, 2010 report from Dr. Lewis in which he stated that he was "reasonably certain" that appellant sustained a work-related injury that rendered her disabled from employment." Appellant also submitted a report of a January 31, 2005 magnetic resonance imaging (MRI) scan.

In a merit decision dated March 21, 2011, OWCP denied modification of the September 20, 2010 decision. It found that the medical evidence failed to establish that appellant's claimed disability from February 11, 2005 to May 26, 2006 was causally related to the accepted work injury.

In an undated appeal request form, appellant requested reconsideration. In a letter dated July 14, 2011, she stated that she was enclosing a copy of an attending physician's report from her treating physician, which allegedly addressed "the specific dates and remarks in question, in the basis for decision dated March 21, 2011." Appellant's reconsideration request was not accompanied by an attending physician's report from Dr. Lewis or any other physician.

The record contains a January 2, 2009 written order for a TENS unit, signed by Dr. Lewis, and a July 27, 2011 authorization for physical therapy.

By decision dated July 27, 2011, OWCP denied appellant's request for reconsideration, finding that the evidence presented was insufficient to warrant a merit review.

On appeal, appellant contends that her ratings should be higher because she experiences throbbing pain and numbness in her hands and wrists.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ 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.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

By decision dated March 21, 2011, OWCP denied modification of its September 20, 2010 decision, finding that the medical evidence failed to establish that appellant's claimed disability from February 11, 2005 to May 26, 2006 was causally related to the accepted work injury. The issue is whether the evidence and argument submitted in support of appellant's July 14, 2011 request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(2). The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits of her claim.

In her application for reconsideration, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. A claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not, however, submit new and relevant medical evidence in this case.

In her July 14, 2011 letter, appellant stated that she was enclosing a copy of an attending physician's report from her treating physician, which allegedly addressed "the specific dates and remarks in question, in the basis for decision dated March 21, 2011." Appellant's reconsideration request, however, was not accompanied by an attending physician's report from Dr. Lewis or any other physician. The only evidence received by OWCP subsequent to the March 21, 2011 decision was a copy of a January 2, 2009 order for a TENS unit, signed by Dr. Lewis. As Dr. Lewis's order did not address the issue for determination, namely whether

³ 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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

appellant's claimed disability was causally related to her accepted injury, it is irrelevant and does not constitute a basis for reopening this case.⁸

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends that she is entitled to compensation because she is disabled due to her accepted injury. As noted, the Board does not have jurisdiction over the merits of this case. For reasons stated, the Board finds that the evidence submitted in support of appellant's request for reconsideration is insufficient to warrant further merit review.

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 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ See *supra* note 7 and accompanying text.