

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

_____)	
W.B., Appellant)	
)	
and)	Docket No. 11-2113
)	Issued: April 17, 2012
)	
TENNESSEE VALLEY AUTHORITY,)	
CUMBERLAND FOSSIL PLANT,)	
Cumberland City, TN, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2011 appellant, through his attorney, filed a timely appeal of the July 21, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than one year elapsed between the most recent merit decision of June 25, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

On appeal, appellant's attorney contends that OWCP's July 21, 2011 decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant sustained noise-induced hearing loss while working as a boilermaker welder at the employing establishment. In a decision dated June 25, 2010, it rescinded the acceptance of the claim.² OWCP relied on the January 12, 2010 supplemental medical opinion of Dr. Jeffrey B. Marvel, a Board-certified otolaryngologist and OWCP referral physician, who reviewed a revised statement of facts and found that the hearing loss was not causally related to appellant's federal employment.

By letter dated June 22, 2011, appellant, through his attorney, requested reconsideration.

In a July 21, 2011 decision, OWCP denied appellant's request for reconsideration, finding that it neither raised substantive legal questions nor included new and relevant evidence warranting a merit review of his claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ OWCP's regulations provide that 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 OWCP's 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 of the merits.

ANALYSIS

OWCP denied appellant's request for further reconsideration on the merits of his claim on the grounds that he failed to submit any evidence or argument to warrant a merit review. The record reflects that he submitted no evidence or argument to OWCP subsequent to the June 25, 2010 merit decision on his claim.

Although timely filed, appellant's June 22, 2011 application for reconsideration did not set forth any argument or contain evidence that either: (1) showed that OWCP erroneously applied or interpreted a specific point of law; (2) advanced a relevant legal argument not previously considered by OWCP; or (3) constituted relevant and pertinent new evidence not

² Also, on June 25, 2010, OWCP advised appellant that it could not consider his claim for a schedule award based on its rescission of the acceptance of his claim.

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 anytime on her own motion or on application. *Id.* at § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

previously considered by OWCP.⁶ Because he failed to meet at least one of these standards, OWCP properly denied the application for reconsideration without reopening the case for a review on the merits.⁷

Counsel argued on appeal that the July 21, 2011 decision was contrary to fact and law. As noted, appellant did not offer a valid legal contention or pertinent evidence not previously considered by OWCP. The Board finds, therefore, that OWCP properly denied the request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2012
Washington, DC

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

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

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

⁶ *Id.* at § 10.606.

⁷ *Id.* at § 10.608; *M.E.*, 58 ECAB 694 (2007) (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).