

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

D.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 12-770
Issued: April 20, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 23, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) January 9, 2012 nonmerit decision.¹ Pursuant to the Federal Employees' Compensation Act² (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 February 9, 2011. The Board lacks jurisdiction to review the merits of this claim.³

¹ The Board notes that appellant submitted additional evidence after OWCP rendered its January 9, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 20 C.F.R. § 10.606(b)(2).

² 5 U.S.C. 8101 *et seq.*

³ 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 Office 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).

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).

FACTUAL HISTORY

On December 19, 2006 appellant, a 47-year-old letter carrier, filed an occupational disease claim alleging that he sustained bilateral hip and lower extremity conditions as a result of employment activities. OWCP accepted his claim for temporary aggravation of bilateral arthropathy of the ankle, foot, pelvic and thigh regions and he was paid appropriate compensation benefits.⁴

The record contains a November 26, 2007 second opinion report from Dr. Bernard Stevens, a Board-certified internist, who found that appellant's ankle was enlarged and deformed due to his underlying traumatic osteoarthritis together with his obesity. In a second opinion report dated January 13, 2010, Dr. Hythem Shadid, a Board-certified orthopedic surgeon, provided examination findings and opined that appellant no longer had any residuals related to his accepted condition and that his current condition was due to his preexisting osteoarthritis.

On May 26, 2010 OWCP issued a notice of proposed termination of compensation and medical benefits, based on Dr. Shadid's opinion that appellant's accepted conditions had resolved. By decision dated June 30, 2010, OWCP finalized its proposed termination of benefits. In a decision dated February 9, 2011, an OWCP hearing representative affirmed the June 30, 2010 decision on the grounds that the medical evidence of record established that appellant's accepted conditions had resolved.

In a letter dated October 24, 2011, appellant requested reconsideration through his wife, who stated that appellant's physical and emotional condition had deteriorated and that he had been forced to accept welfare due to his financial circumstances. Appellant's wife alleged that OWCP's physicians were biased in their opinions.

Appellant submitted an October 18, 2011 letter from the Social Security Administration approving his claim for Supplemental Security Income benefits. He also submitted one page of Dr. Stevens' November 26, 2007 report pertaining to his underlying traumatic osteoarthritis.

By decision dated January 9, 2012, OWCP denied appellant's request for reconsideration, finding that the evidence presented was insufficient to warrant a merit review.

⁴ Prior claims include a January 27, 1994 traumatic injury claim that was accepted for right ankle sprain (File No. xxxxxx941) and a September 27, 2000 claim that was accepted for temporary aggravation of preexisting arthropathy of the bilateral ankle, foot, pelvic region and thigh (File No. xxxxxx422).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ 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.⁶ 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.⁷ 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.⁸ 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.⁹

ANALYSIS

By decision dated February 9, 2011, an OWCP hearing representative affirmed the June 30, 2010 decision, finding that the medical evidence established that appellant's accepted condition had resolved. The issue is whether the evidence and argument submitted in support of appellant's October 24, 2011 request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(2).

In his application for reconsideration, submitted on his behalf by his wife, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument.¹⁰ 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. The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits.

Evidence received in support of the reconsideration request included a letter from SSA and a copy of one page from Dr. Stevens' November 26, 2007 report. SSA's October 18, 2011 letter is not relevant to the issue in this case, which is medical in nature. As noted, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ The excerpt from Dr. Steven's report was previously received into

⁵ 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).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ The Board notes that no specific allegations were made and no evidence was submitted to support claims of bias on the part of OWCP's referral physicians.

¹¹ *Edward Matthew Diekemper*, *supra* note 9.

evidence and is, therefore cumulative and duplicative in nature.¹² The Board finds that the evidence submitted by appellant does not constitute relevant and pertinent new evidence not previously considered by OWCP.¹³ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). He 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 his benefits were terminated before he was able to obtain updated evidence. 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).

¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

¹³ See *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the, January 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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