

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

S.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

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**Docket No. 12-299
Issued: August 7, 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, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 28, 2011 appellant filed a timely appeal from a November 10, 2011 Office of Workers' Compensation Programs' (OWCP) decision denying his request for reconsideration of the merits of his claim. As more than 180 days elapsed from the date of the last merit decision of March 16, 2011 to the filing date of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction over the nonmerit decision.

ISSUE

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

On appeal, appellant argues the merits of his case.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant, then a 26-year-old letter carrier, sustained a low back strain as a result of delivering a package in the performance of duty on November 4, 1998. On March 16, 2000 he filed a claim for a recurrence of disability, which OWCP accepted on July 23, 2001. Appellant returned to light-duty work in September 2000.

On July 12, 2001 appellant filed a second recurrence claim.

By decision dated October 25, 2001, OWCP denied the claim on the basis that the evidence did not establish a change in the nature or extent of appellant's employment-related injury or his light-duty position.

On November 2, 2010 the employing establishment offered appellant a limited-duty position as a letter carrier. Appellant did not accept the modified assignment offer.

By decision dated November 9, 2010, OWCP determined that the job offer was suitable and informed appellant that, if he failed to accept the position, he must provide a written explanation of his reasons within 30 days.

Subsequently, appellant submitted a narrative statement arguing that the offer was not suitable as it did not comply with the Employee and Labor Relations Manual, Part 545 and 546.

By decision dated December 29, 2010, OWCP found that appellant's reasons were unacceptable and afforded him 15 days to accept the position.

By decision dated March 16, 2011, OWCP terminated appellant's wage-loss and schedule award benefits effective April 10, 2011 on the grounds that he failed to accept suitable employment, pursuant to 5 U.S.C. § 8106(c).

On March 24, 2011 appellant requested reconsideration. He submitted a March 15, 2011 prescription and a May 4, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine.

By decision dated June 22, 2011, OWCP denied appellant's request for reconsideration.

On August 22, 2011 appellant requested reconsideration. He resubmitted the March 15, 2011 prescription note and the May 4, 2011 MRI scan.

By decision dated November 10, 2011, OWCP denied appellant's request for reconsideration of the merits of this claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

an award for or against compensation.² OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's 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 or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of his August 22, 2011 request for reconsideration, appellant resubmitted a March 15, 2011 prescription note and a May 4, 2011 MRI scan of the lumbar spine. The Board finds that submission of these reports did not require reopening his case for merit review because he had submitted the same reports, which were previously reviewed by OWCP in a decision dated June 22, 2011. As the reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence. Therefore, appellant has not established a basis for reopening his case.⁹

² *Id.* 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).

³ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ 20 C.F.R. § 10.606(b)(2). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ See *A.L.*, *supra* note 4. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ See *D.K.*, 59 ECAB 141 (2007).

Because appellant only submitted repetitive evidence with his request for reconsideration, the Board finds that he did not meet any of the necessary requirements and he is not entitled to further merit review.¹⁰

On appeal, appellant argued the merits of his case. The Board noted above that it only has jurisdiction over OWCP's November 10, 2011 nonmerit decision which denied his request for reconsideration and therefore is precluded from conducting a merit review.

CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that it erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his claim for further consideration of the merits of his claim under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ See *L.H.*, 59 ECAB 253 (2007).