

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 12-812
Issued: August 22, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 29, 2012 appellant filed a timely appeal from an October 17, 2011 Office of Workers' Compensation Programs' (OWCP) decision, which denied his request for reconsideration. Because more than 180 days elapsed between the last merit decision of March 2, 2011 to the filing of this appeal on February 29, 2012, the Board lacks jurisdiction to review the merits of his case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

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).

FACTUAL HISTORY

On January 6, 2011 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained right knee pain in the performance of duty on January 5, 2011. He stopped work that day.

By decision dated March 2, 2011, OWCP denied the claim finding that appellant did not submit sufficient medical evidence to establish a diagnosis in connection with the January 5, 2011 employment incident.

On July 27, 2011 appellant requested reconsideration. He submitted a July 26, 2011 narrative statement advising that he was sending new medical evidence to OWCP.

In an August 16, 2011 letter, OWCP acknowledged appellant's reconsideration request and notified him that the medical evidence was not received with the request. It afforded him 30 days to submit additional evidence. Appellant did not respond.

By decision dated October 17, 2011, OWCP denied appellant's request for reconsideration of the merits finding that he did not meet any of the criteria for timely reconsideration requests.

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.¹ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).²

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.³ 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.⁴ 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.⁵

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 he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

¹ 5 U.S.C. § 8101 *et seq.* 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).

² See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

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

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

In support of his July 27, 2011 reconsideration request, appellant submitted a July 26, 2011 narrative statement. The Board notes that submission of this statement did not require reopening his case for merit review. OWCP denied appellant's claim based on the lack of supportive medical evidence and his narrative statement merely noted that he was sending new medical evidence to OWCP. Appellant's statement is not relevant and pertinent to the issue in his case and is not sufficient to require OWCP to reopen his claim for consideration of the merits.⁶

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. As he did not meet any of the necessary requirements, he is not entitled to further merit review.

The Board notes that, following issuance of the October 17, 2011 decision and on appeal, appellant submitted new medical evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.⁷

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 OWCP 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.

⁶ See *James W. Scott*, 55 ECAB 606 (2004).

⁷ See 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 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