

FACTUAL HISTORY

The record reflects that appellant had previously filed claims during the time period 1983 through 1985, which OWCP had accepted for early peripheral neuropathy, lumbosacral sprain and left frontal parietal contusion. On May 6, 2010 appellant, then a 57-year-old shop ship propeller finisher, filed an occupational disease claim alleging that he sustained a left arm injury and underwent ulnar entrapment repair surgery as a result of working with various tools. He realized that his condition was caused or aggravated by his employment on June 21, 1983.

Appellant submitted a supplemental statement dated March 11, 2010 which described his previously accepted injuries and that he underwent left arm surgery. He explained that he was diagnosed with cancer and believed that exposure to lead and other toxic chemicals at work resulted in his conditions.

On July 1, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional factual and medical evidence.

Appellant submitted various diagnostic reports dated March 21 to June 14, 2005, medical reports regarding his previously accepted injuries and left arm surgery and a description of his job duties as a ship propeller finisher helper.

OWCP thereafter received a December 22, 2009 counseling report, listing appellant as diagnosed with prostate cancer. Counsel also submitted various diagnostic reports dated April 22 and July 6, 2010 and an April 13, 2010 surgical pathology consultation report.

In a July 13, 2010 statement, appellant explained that he noticed red dots and rashes on his arms when he worked at the naval shipyard as a propeller finisher. He believed that his work contributed to his left arm injury and related that it continued to bother him. On July 20, 2010 appellant noted that he was unable to work since his 1983 injuries. He explained that while working at the shipyard he was exposed to toxic chemicals such as trichloroethane and methylchloroform and that the air was filled with dust and metallic particles of abrasive grit and chips.

By decision dated September 7, 2010, OWCP denied appellant's claim finding insufficient evidence to establish that his left arm condition was causally related to the alleged employment exposure. It accepted that he sustained a left arm condition and that his work as a ship propeller finisher required working with various tools, but the medical evidence did not establish that his condition resulted from his employment duties. Appellant was advised that if his claim was that his current condition was the result of residuals of another accepted work injury, he could pursue a consequential injury claim by filing a CA-2 form, with supporting medical evidence.

On October 22, 2010 appellant submitted a request for reconsideration. He resubmitted his CA-2 form, the July 1, 2010 development letter, the September 7, 2010 decision with handwritten notes and a July 13, 2010 statement. Appellant noted on these documents that OWCP referenced a wrong claim number and that his claim was for surgery to his left arm.

By decision dated November 17, 2010, OWCP denied appellant's request for reconsideration finding that the additional evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that the materials submitted were duplicative to the evidence already on record.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district office.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.⁶ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board has no jurisdiction to review OWCP's September 7, 2010 merit decision denying appellant's compensation claim. Appellant did not file a timely appeal of that decision and the Board may not review the merits of his case. The only decision the Board may review is OWCP's November 17, 2010 nonmerit decision denying his request for reconsideration. The Board finds that OWCP properly denied appellant's request for reconsideration. Appellant did not meet any of the requirements sufficient to warrant merit review.

³ 5 U.S.C. § 8128(a); *see also* *W.C.*, 59 ECAB 372 (2008); *D.L.*, Docket No. 09-1549 (issued February 23, 2010).

⁴ 20 C.F.R. § 10.605; *see also* *R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ *Id.* at § 10.606(b); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

In his October 22, 2010 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by OWCP. Appellant's notations that his claim number was incorrect and that his claim pertained to a left arm surgical procedure are not new legal arguments warranting merit review. His May 6, 2010 occupational disease claim for left arm injury was assigned a new claim number because he filed a new occupational disease claim. Appellant clarified that he sought payment of expenses related to his surgery. He did not file a CA-2 form recurrence claim, alleging that his current conditions were related to his previously accepted injuries, but identified new work factors.

To support his request for reconsideration, appellant resubmitted his CA-2 form, OWCP's July 1, 2010 development letter, September 7, 2010 decision with handwritten notes and his July 13, 2010 statement. The submission of evidence which repeats or duplicates evidence already of record and considered by OWCP does not constitute a basis for reopening a case. It is insufficient to warrant further merit review.⁹ Because appellant's request for reconsideration failed to show that OWCP erroneously applied or interpreted a specific point of law, failed to advance a relevant legal argument not previously considered by OWCP and failed to provide relevant and pertinent new evidence not previously considered by OWCP, the Board finds that OWCP properly denied further merit review of his case. The Board will affirm the November 17, 2010 decision.

On appeal, appellant related that his peripheral neuropathy was previously accepted. He also explained that he will have nerve damage for the rest of his life that prevents him from working elsewhere. As explained by OWCP, if appellant is alleging that his current condition is a residual of previously accepted injuries, he may file a CA-2 form under that claim and submit supporting medical evidence. While appellant provided additional evidence on appeal, the Board does not have jurisdiction to review that evidence as such evidence was not before OWCP at the time of its final decision.¹⁰

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

CONCLUSION

The Board find that OWCP properly denied appellant's October 22, 2010 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

⁹ *D.K.*, 59 ECAB 141 (2007); *E.M.*, Docket No. 09-39 (issued March 3, 2009).

¹⁰ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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