

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

P.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gaithersburg, MD, Employer**

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**Docket No. 11-1275
Issued: January 17, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 2, 2011 appellant filed a timely appeal from the March 10, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her reconsideration request.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 this nonmerit decision. Because more than one year has elapsed between the last merit decision dated December 11, 1995 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

¹ For final adverse OWCP 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 OWCP 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).

² 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. OWCP accepted that appellant sustained tendinitis and de Quervain's complex of the right hand and wrist and she returned to limited-duty work on December 29, 1990. In April 8 and June 9, 1994 decisions, it found that she did not sustain a recurrence of total disability on or after February 19, 1992 due to her accepted right hand and wrist conditions. In a December 11, 1995 decision,³ the Board affirmed OWCP's decisions. It determined that the reports of appellant's attending Board-certified orthopedic surgeons, Dr. Rida N. Azer and Dr. William E. Gentry, did not establish that she sustained an employment-related recurrence of disability. In eight decisions issued between April 3, 1997 and May 4, 2001, OWCP denied her request for merit review on the grounds that her applications for review were not timely filed and failed to present clear evidence of error. In March 17, 2003 and July 13, 2004 decisions,⁴ the Board affirmed OWCP's refusal to reopen appellant's case for merit review because her applications for review were not timely filed and failed to present clear evidence of error. In connection with her reconsideration requests, appellant argued that her requests were timely because they were filed within a year of a Board decision. She also claimed that the reports of Dr. Azer showed that she had disability after February 19, 1992 due to her accepted right hand and wrist injury.

In decisions dated January 26, 2006 and March 5, 2007, OWCP again denied appellant's requests for reconsideration without performing a merit review. In a December 12, 2007 decision,⁵ the Board set aside OWCP's March 5, 2007 decision, finding that OWCP did not provide sufficient findings of fact and reasoning to explain its determination that she was not entitled to a review of the merits of her claim. It remanded the case to OWCP for a proper evaluation of appellant's December 2006 reconsideration request in accordance with 5 U.S.C. § 8128(a) and the relevant regulations. In a January 28, 2008 decision, OWCP denied her request for reconsideration without a merit review, finding that she had not timely requested reconsideration and had failed to submit factual or medical evidence sufficient to establish clear evidence of error in OWCP's prior merit decisions. In an October 15, 2008 decision,⁶ the Board affirmed OWCP's refusal to reopen appellant's case for merit review because her applications for review were not timely filed and failed to present clear evidence of error.

In November 12, 2008, March 4 and 24, 2009 letters, appellant requested reconsideration of her claim. She repeated many of the arguments that she made in connection with her prior reconsideration requests. In a May 1, 2009 decision, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and did not establish clear evidence of error. In a February 26, 2010 decision,⁷ the Board affirmed OWCP's May 1, 2009 decision without

³ Docket No. 95-802 (issued December 11, 1995).

⁴ Docket No. 01-2038 (issued March 17, 2003); Docket No. 04-545 (issued July 13, 2004).

⁵ Docket No. 07-1364 (issued December 12, 2007).

⁶ Docket No. 08-1230 (issued October 15, 2008).

⁷ Docket No. 09-1590 (issued February 26, 2010).

considering the merits of her claim. The facts and the circumstances of the case are set forth in the Board's prior decisions and are incorporated herein by reference.

In a January 21, 2011 letter, appellant requested reconsideration of her claim. She contended that her reconsideration request was timely because it was filed within one year of the Board's February 26, 2010 decision. Appellant argued that her claim should be reviewed on the merits. She alleged, as she did in prior requests for reconsideration, that the reports of Dr. Azer showed that she had disability after February 19, 1992 due to her accepted right hand and wrist injury. In addition, appellant contended that OWCP acted improperly by failing to adequately explain why it did not evaluate her reconsideration request and that it failed to apply the appropriate legal standards in adjudicating her claim.

In a March 10, 2011 decision, OWCP denied appellant's reconsideration request finding that she did not submit sufficient evidence or legal argument to require reopening of her claim for review on the merits. It stated, "The arguments that you have provided are considered to be cumulative and repetitive and have been previously addressed by [OWCP]."

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ 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.⁹ 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.¹⁰ 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.¹¹ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹² While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹³

⁸ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he 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).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ *Id.* at § 10.607(a).

¹¹ *Id.* at § 10.608(b).

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹³ *John F. Critz*, 44 ECAB 788, 794 (1993).

ANALYSIS

The Board does not have jurisdiction over the merits of appellant's claim. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for a review of the merits.

In her January 21, 2001 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. A claimant may be entitled to a merit review by submitting new and relevant evidence, but she did not submit any new and relevant medical evidence in this case. Appellant presented several arguments that she had presented on numerous prior occasions. As noted, the submission of argument which repeats or duplicates argument already presented to OWCP does not constitute a basis for reopening a case.¹⁴ Appellant contended that her reconsideration request was timely because it was filed within one year of the Board's February 26, 2010 decision (which was a nonmerit decision) and asserted that her claim should have been reviewed on the merits. According to OWCP procedure, the one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. This right to reconsideration within one year does not accompany nonmerit decisions of the Board.¹⁵ The Board notes that this argument does not have a reasonable color of validity. The Board notes that the last merit decision was in 1995. Appellant alleged that the reports of Dr. Azer, an attending Board-certified orthopedic surgeon, showed that she had disability after February 19, 1992 due to her accepted right hand and wrist injury and that OWCP failed to adequately support its repeated denials of her claim. However, she has presented a similar argument on numerous prior occasions.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). The Board notes that the last merit decision was in 1995. Appellant 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.

CONCLUSION

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

¹⁴ See *supra* note 12.

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (October 2011).

ORDER

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

Issued: January 17, 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