

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

C.S., Appellant)

and)

DEPARTMENT OF DEFENSE, GREAT LAKES)
NAVAL CENTER, MILITARY MEDICAL)
SUPPORT OFFICE, Great Lakes, IL, Employer)

**Docket No. 12-112
Issued: June 18, 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, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 17, 2011 appellant filed a timely appeal from a June 29, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.² The Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Under section 5 U.S.C. § 8149 of FECA and sections 20 C.F.R. §§ 501.2(c) and 501.3(a) of its implementing regulations, the Board has jurisdiction to review final adverse decisions of OWCP issued under FECA. According to 20 C.F.R. § 501.3(e), for OWCP decisions issued on or after November 19, 2008, the Board's review authority is limited to appeals filed within 180 days from the date OWCP issued its decision.

On appeal, appellant asserts that the Board failed to consider medical evidence during a prior appeal of this case.

FACTUAL HISTORY

This is the second appeal before the Board in this case. By decision dated April 25, 2011,³ the Board affirmed a July 31, 2009 decision of OWCP denying appellant's claim for a cerebrovascular accident and congestive heart failure finding that the medical evidence was insufficient to establish a causal relationship between those conditions and factors of her federal employment. The facts of the case as set forth in the Board's prior decision are incorporated by reference.

In a June 3, 2011 letter, appellant requested reconsideration, noting that she had received the Board's April 25, 2011 decision and order. She stated that she would submit a "brief of [her] memorandum." Appellant did not submit any additional evidence or argument on or before June 29, 2011.

By decision dated June 29, 2011, OWCP denied reconsideration of the merits of the claim. It found that appellant's June 3, 2011 letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that 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.⁵ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁷ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.⁸ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether

³ Docket No. 10-840 (issued April 25, 2011).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁷ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁸ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁹

ANALYSIS

The last merit decision issued by OWCP was on July 31, 2009, denying appellant's claim for a cerebrovascular accident and congestive heart failure.

Appellant's June 28, 2011 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law or advance a new legal argument not previously considered by OWCP. Although she mentioned that she would submit a brief or memorandum, she did not do so on or before June 29, 2011. As FECA's implementing regulations note, an application for reconsideration must set forth arguments or evidence satisfying one of the three requirements for obtaining a merit review.¹⁰ Consequently, appellant is not entitled to a review of her case on the merits based on the third requirement under section 10.606(b)(2).¹¹

On appeal, appellant contends that the Board failed to consider the medical evidence prior to issuing its April 25, 2011 decision. She did not file a petition for reconsideration with the Board within 30 days of issuance of that decision. Therefore, that decision became final.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁹ *Annette Louise*, 54 ECAB 783 (2003).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ *Id.* at § 10.606(b)(2)(iii).

¹² *See id.* at §§ 501.6(d) and 501.7(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2011 is affirmed.

Issued: June 18, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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