

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

W.R., claiming as widow of W.R., Appellant)	
)	
and)	Docket No. 12-243
)	Issued: June 25, 2012
DEPARTMENT OF THE TREASURY,)	
BUREAU OF ALCOHOL, TOBACCO &)	
FIREARMS, Sioux Falls, SD, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2011 appellant filed a timely appeal from the September 2, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for further review of her claim. As more than 180 days elapsed from the last merit decision of April 30, 2010 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant's husband, the deceased employee, was a special agent when he filed a claim accepted by OWCP for congestive heart failure, ventricular tachycardia and myocardial infarction. He died on April 8, 2005. On May 3, 2005 appellant filed a claim for widow's compensation, Form CA-5, alleging that his death was due to the accepted conditions.

By decision dated February 22, 2006, OWCP denied appellant's claim as the evidence did not establish that the employee's death was causally related to factors of his federal employment consequential to his accepted claim. In a decision dated August 20, 2007, an OWCP hearing representative set aside this decision and remanded the case to an impartial specialist for an opinion on whether the employee's death was causally related or consequential to accepted conditions in his claim. The hearing representative noted that the certificate of death, signed by Dr. Bruce Buchsbaum, the employee's treating Board-certified nephrologist, listed cause of death as congestive heart failure, ischemic cardiomyopathy and multiple myocardial infarctions. Dr. Buchsbaum reported on June 21, 2005 that the employee's myocardial infarctions related back as far as 1971 and progressed over the years and that the employee required dialysis in August 2004 as his congestive heart failure became unresponsive to medications. He advised that the employee's condition grew worse, that he was unable to oxygenate and ultimately passed away. The hearing representative also discussed the opinion of Dr. Prasad Palakurthy, the employee's treating Board-certified cardiologist, who reported on May 8, 2007 that the employee's extensive inferior wall myocardial infarction in 1971 was a contributing factor to his severe left ventricular dysfunction, ischemic cardiomyopathy and congestive heart failure. Dr. Palakurthy concluded that this resulted in organ failure and ultimately the employee's death.

The medical adviser determined that the employee's death was not caused by the accepted conditions. At the time of his death, the employee was hospitalized due to sepsis in a foot ulcer that developed due to peripheral arterial insufficiency.

OWCP referred the employee's records to Dr. Gary Beauchamp, a Board-certified cardiologist, for an impartial medical opinion. Dr. Beauchamp opined on December 5, 2007 that the most likely cause of the employee's death was sepsis as he had multiple potential sources of infection and that with sepsis there was often multiple organ failure. He did not find that the cause of the employee's death was employment related.

In a December 7, 2007 decision, OWCP affirmed the denial of appellant's claim. Appellant filed requests for reconsideration which were subsequently denied. The last merit decision denying reconsideration was issued on April 30, 2010.

On April 29, 2011 appellant requested reconsideration and resubmitted the employee's death certificate as well as a July 12, 2005 report by Dr. Buchsbaum that was duplicative of that already in the record. In an April 25, 2011 report, Dr. Buchsbaum noted that he cared for the employee when dialysis was required. He signed the death certificate noting that the cause of death was congestive heart failure that was caused by multiple organ failure. Dr. Buchsbaum opined that, since congestive heart failure was an accepted condition, appellant should receive survivor's widow benefits. He noted that the employee had a myocardial infarction in 1971 and

due to severe heart damage, his health steadily declined. Dr. Buchsbaum noted that the employee had significantly impaired left ventricular ejection fraction as well as ischemic cardiomyopathy. In an April 26, 2011 report, Dr. Palakurthy noted that he had been the employee's cardiologist for nearly a decade. In his opinion, congestive heart failure was caused by the loss of muscle secondary to the employee's myocardial infarction in 1971. Dr. Palakurthy testified at the 1995 hearing that the infarction destroyed a large portion of the employee's heart muscle, which significantly weakened his heart and resulted in heart failure and ventricular tachycardia. He opined that, although progressive atherosclerotic disease had contributed to the death of the employee, the damage sustained in 1971 played a major role in subsequent events.

By decision dated September 2, 2011, OWCP denied appellant's request for reconsideration without review of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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

Appellant did not show that OWCP erroneously applied or interpreted a point of law and did not advance a relevant legal argument not previously considered by OWCP. OWCP denied appellant's claim for the reason that the medical evidence did not establish that the employee died due to his accepted employment-related conditions. Therefore, the issue can only be decided by medical evidence. The death certificate and the July 12, 2005 medical report by Dr. Buchsbaum are duplicative of evidence already in the record and previously reviewed. The medical reports by Dr. Buchsbaum and Dr. Palakurthy are repetitive of the findings in their prior reports for which OWCP referred the records to Dr. Beauchamp as the impartial medical specialist to resolve the conflict regarding the employee's cause of death. Because appellant only submitted duplicative or repetitive evidence with her request for reconsideration, the Board

² 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

finds that these reports did not constitute relevant and pertinent new evidence not previously considered by OWCP.⁶

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2011 is affirmed.

Issued: June 25, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ See *T.M.*, Docket No. 11-1882 (issued March 27, 2012).

⁷ See *L.H.*, 59 ECAB 253 (2007).