

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

X.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
EDWARD HINES JR. MEDICAL CENTER,
Hines, IL, Employer**

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**Docket No. 12-373
Issued: June 1, 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 December 13, 2011 appellant filed a timely appeal from the June 17, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied his reconsideration request. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision. Since more than 180 days elapsed between the last merit decision of September 27, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.

ISSUE

The issue is whether OWCP properly denied appellant's May 11, 2011 reconsideration request under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 14, 2008 appellant, a 23-year-old police officer, filed a traumatic injury claim alleging that he sustained an injury in the performance of duty as a result of a motor vehicle accident. OWCP accepted his claim for low back and right hip pain.

On July 12, 2010 appellant claimed a recurrence beginning June 21, 2010. In a September 27, 2010 decision, OWCP denied appellant's recurrence claim. It found that the factual and medical evidence did not establish that the claimed recurrence resulted from the accepted work injury. OWCP notified appellant that any request for reconsideration must be made within one-calendar year of the date of the decision.

On May 11, 2011 appellant requested reconsideration. He submitted an appeal request form with a checkmark indicating that he was requesting reconsideration.

In a June 17, 2011 decision, OWCP denied appellant's reconsideration request. It found appellant's letter neither raised substantive legal questions nor included new and relevant evidence; therefore, it was insufficient to warrant a review of its prior decision.

Appellant argues on appeal that OWCP did not have all of the pertinent medical information regarding his condition when it made its prior decision. He submits to the Board a September 20, 2011 medical report, which he feels is needed for a complete review.²

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.³ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (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.⁴

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁵ A timely request for reconsideration may be granted if

² The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). The Board therefore has no jurisdiction to review the new medical report appellant submitted on appeal. As indicated earlier, the Board also has no jurisdiction to review OWCP's September 27, 2010 decision denying appellant's recurrence claim. The only decision the Board may review is OWCP's June 17, 2011 nonmerit decision denying appellant's May 11, 2011 reconsideration request.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.607(a).

OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Appellant sent his May 11, 2011 reconsideration request within one-calendar year of OWCP's September 27, 2010 decision denying his recurrence claim. His request was therefore timely. The question for determination is whether appellant's request met at least one of the three standards for obtaining a merit review of his case.

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by OWCP, and he did not submit relevant and pertinent new evidence not previously considered by OWCP.

Appellant submitted an appeal request form with a checkmark indicating that he was requesting reconsideration. He made no argument and submitted no evidence to support his request. Such a bare request for reconsideration is insufficient on its face to meet any of the standards for obtaining reconsideration. The Board will therefore affirm OWCP's June 17, 2011 decision denying appellant's request.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 11, 2011 reconsideration request.

⁶ *Id.* at § 10.608.

ORDER

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

Issued: June 1, 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