

On appeal, appellant contends that OWCP failed to respond to her request for an extension to submit evidence in support of her recurrence of disability claim as directed and for copies of its telephone logs to prepare for the instant appeal.

FACTUAL HISTORY

This case was previously on appeal before the Board with respect to the termination of appellant's compensation benefits. In an August 4, 2006 decision,³ the Board affirmed an OWCP decision dated November 17, 2005 which terminated appellant's wage-loss compensation and medical benefits effective October 6, 2003 on the grounds that she no longer had any residuals or disability causally related to her December 10, 2002 employment injury.⁴ The Board accorded weight to the medical opinion of Dr. Patrick N. Bays, a Board-certified osteopath and an OWCP referral physician, who found that appellant no longer had any residuals of her accepted condition. The Board further held that the medical evidence submitted by appellant was insufficient to establish that she had any work-related residuals or disability after October 6, 2003. In a February 13, 2009 decision, the Board affirmed OWCP's May 8, 2008 decision which denied appellant's request for reconsideration of the termination decision.⁵ The facts and history relevant to the present appeal are hereafter set forth.

On June 20, 2009 appellant filed a claim alleging a recurrence of disability on June 1, 2009.

By letter dated October 23, 2009, OWCP addressed the factual and medical evidence appellant needed to submit to establish her recurrence claim. Appellant was afforded 30 days to submit the requested evidence.

In a November 24, 2009 decision, OWCP denied appellant's claim, finding that she had not submitted the necessary factual or medical evidence to establish a recurrence of disability commencing June 1, 2009 causally related to her accepted December 10, 2002 work injury.

On June 23, 2010 appellant requested reconsideration.

In an August 16, 2010 decision, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was repetitious and insufficient to warrant a merit review of her claim.

On November 24, 2010 appellant requested reconsideration. She contended that OWCP erred by only performing a limited review of her case as the medical evidence of record established that she sustained a recurrence of disability causally related to her December 10, 2002 employment injury. Appellant stated that her recent diagnosis which included narrowing of

³ Docket No. 06-729 (issued August 4, 2006).

⁴ OWCP accepted that on December 10, 2002 appellant, then a 45-year-old mail handler dock technician, sustained a thoracic strain as a result of pushing a mail hamper. Appellant retired on disability from the employing establishment in September 2004.

⁵ Docket No. 08-2168 (issued February 13, 2009).

the spine and a herniated disc were not present at the time she was hired by the employing establishment. She had been on disability retirement for several years and had not worked in any other capacity that would cause her disability.

In a February 23, 2011 decision, OWCP denied appellant's request for reconsideration, finding that she did not submit any new and relevant evidence or legal argument warranting a merit review of her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁶ OWCP's regulation provide 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.⁷ 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.⁸ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

On November 24, 2010 appellant disagreed with OWCP's August 16, 2010 decision which denied her request for reconsideration of its finding that she did not sustain a recurrence of disability commencing June 1, 2009 due to the accepted December 10, 2002 work injury. The relevant issue is whether her disability during the claimed period was causally related to the accepted employment injury. The Board notes that this issue is medical in nature.

On reconsideration, appellant contended that OWCP erred in only conducting a limited review of her case as the medical evidence of record established that she sustained a recurrence of disability causally related to the accepted work injury. She stated that her recent diagnosis of narrowing of the spine and a herniated disc did not exist prior to working at the employing establishment. Appellant further stated that, since her disability retirement, she had not worked in any other capacity that would cause her current disability. The arguments raised by her addressed the relative merits of the medical evidence of record, suggesting that it was supportive of her recurrence claim. OWCP previously weighed this evidence, however, and found it insufficient to establish that appellant sustained a recurrence of disability commencing June 1, 2009 causally related to the accepted employment injury. Further, appellant did not submit any additional relevant and pertinent new medical evidence not previously considered by OWCP in support of her contentions. The Board finds that her contentions are insufficient to reopen her claim for further merit review.

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the 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).

⁷ 20 C.F.R. § 10.606(b)(1)-(2).

⁸ *Id.* at § 10.607(a).

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her November 24, 2010 request for reconsideration.⁹

Appellant's contentions on appeal that OWCP failed to respond to her request for an extension to submit evidence in support of her recurrence claim as directed and for copies of its telephone logs to prepare for the instant appeal are not pertinent to the underlying issue in this appeal, which is medical in nature, whether she has established an employment-related disability commencing June 1, 2009.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁹ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration 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).