



## **FACTUAL HISTORY**

On May 28, 2010 appellant, then a 56-year-old enumerator, filed a claim alleging that, as a result of extensive walking and bending, he sustained an injury to his lower back and right thigh. By decision dated December 3, 2010, OWCP denied appellant's claim. It determined that, although appellant had established that the employment factors occurred, he had not established that the injury or medical condition was causally related to the compensable work factors. This decision was affirmed by a hearing representative on June 6, 2011. The hearing representative determined that appellant had not established that he sustained a back injury in the performance of duty causally related to factors of his federal employment.

By letter received by OWCP on December 21, 2011, appellant requested reconsideration. He indicated that he had new evidence to be considered. No new evidence was received by OWCP. The record also contains a December 15, 2011 letter from appellant's congressman requesting that appellant's claim be reopened. No new evidence was submitted by OWCP.

By decision dated January 4, 2012, OWCP denied appellant's claim for reconsideration.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

## **ANALYSIS**

OWCP denied appellant's claim because he had not established an injury that was causally related to the established factors of federal employment. On appeal, appellant addresses the merits of his case. However, the last merit decision in this case was the hearing representative's decision of June 6, 2011. As previously stated, this decision was issued over 180 days prior to the filing of this appeal and, accordingly, the Board does not have jurisdiction

---

<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

to review the merits of the case.<sup>6</sup> The only issue before the Board is whether OWCP properly denied appellant's reconsideration request.

Appellant submitted no new evidence with his request for reconsideration. Furthermore, he did not argue that OWCP erroneously interpreted or applied a specific point of law nor did he advance a relevant legal argument not previously considered. Accordingly, OWCP properly denied appellant's request for reconsideration.

**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 January 4, 2012 is affirmed.

Issued: November 19, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>6</sup> *Id.* at § 501.3(e).