

FACTUAL HISTORY

On July 12, 2010 appellant, then a 60-year-old maintenance worker, filed a traumatic injury claim alleging that on July 6, 2010 he was climbing a 10-ton truck to fill a water tank when he fell two feet onto dirt. He experienced pain after landing on his right hand and arm. X-rays were performed of appellant's hands and back.

By letter dated July 23, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the medical evidence that he needed to submit in support of his claim. Appellant was afforded 30 days to submit the requested evidence. He did not respond within the allotted time period.

In an August 26, 2010 decision, OWCP denied appellant's claim. It found that the evidence established that the July 6, 2010 incident occurred as alleged. OWCP found that appellant failed to submit sufficient medical evidence to establish that he sustained injury causally related to the accepted incident.

On January 4, 2011 appellant requested reconsideration. Medical reports dated July 9 and August 5, 2010 advised that appellant had a history of arthritis and back and shoulder pain. He was diagnosed as having degenerative joint disease.

In a March 29, 2011 decision, OWCP denied modification of the August 26, 2010 decision. It found that the medical evidence submitted did not provide a rationalized opinion on the causal relationship between the diagnosed degenerative disease and the accepted July 6, 2010 employment incident.

On February 2, 2012 appellant requested reconsideration. In a March 29, 2011 letter,² he stated that on August 5, 2011 he retired under social security disability due to his back problems. He also stated that he did not know what evidence was needed as all his papers were filed through the employing establishment and he had submitted medical evidence regarding his back pain and deformed hand.

In an October 20, 2011 letter, the Office of Personnel Management (OPM) approved appellant's application for disability retirement, finding that he was disabled for work as a maintenance worker due to his back and wrist conditions.

In a February 16, 2012 decision, OWCP denied appellant's request for reconsideration, finding that he failed to submit sufficient medical evidence to warrant a merit review of his claim.

² It appears that appellant inadvertently dated his letter March 29, 2011 rather than March 29, 2012 as he stated that he retired on August 5, 2011.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ OWCP's regulations 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.⁴ 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.⁵ 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 February 2, 2012 appellant disagreed with OWCP's March 29, 2011 decision, finding that he did not meet his burden of proof to establish that his back and wrist conditions were causally related to the accepted July 6, 2010 employment incident. He requested reconsideration. He did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The underlying issue on reconsideration is medical in nature. The Board finds that appellant did not submit relevant and pertinent new evidence on the issue of whether his back and wrist conditions were causally related to the July 6, 2010 incident. The letters from appellant and OPM addressed his disability for work due to his back and wrist conditions. These letters are not relevant to the underlying issue of causal relation because neither document is from a physician and neither supports that he has a medical condition causally related to the June 6, 2010 employment incident. Moreover, it is well settled that findings of other agencies such as OPM are not determinative of disability under FECA as there are different standards of medical proof.⁶ The Board finds, therefore, that this evidence is insufficient to warrant further merit review of the claim.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to the requirements under section 10.606(b)(2). It properly denied his February 2, 2012 request for reconsideration.⁷

³ 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).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ *See Freddie Mosley*, 54 ECAB 255 (2002).

⁷ *Robert E. Cullison*, 55 ECAB 570 (2004); *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).

On appeal, appellant contended that he sustained employment-related back and hand conditions which resulted in his disability for work. For reasons stated, the Board finds that the evidence submitted by appellant in support of his request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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