

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wichita, KS, Employer**

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**Docket No. 13-826
Issued: June 26, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 25, 2013 appellant filed a timely appeal from a December 14, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration of the merits of his claim. As more than 180 days has elapsed between the issuance of the last merit decision of OWCP dated February 29, 2012 and the filing of this appeal on February 25, 2013¹ and pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has no jurisdiction over the merits of the case.

¹ For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2) (2008). For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e) (2009); *R.C.*, Docket No. 10-2371 (issued July 14, 2011).

² 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant generally asserts that his claim was timely filed.

FACTUAL HISTORY

On June 5, 2011 appellant, then a former 43-year-old city letter carrier, filed an occupational disease claim, alleging that carrying a mailbag weighing several pounds and the long hours of standing and walking in his job duties caused cauda equina syndrome with bilateral peripheral nerve impairment in the lower extremities and penile, bowel and bladder dysfunction. He stated that he was first aware of the condition on January 1, 2000 and realized that it was employment related on January 7, 2009 when Dr. John W. Ellis, Board-certified in family medicine, advised him that work duties aggravated a preexisting back condition. The employing establishment signed the claim form on June 9, 2011, advised that appellant had been removed from employment on May 31, 2007 and challenged the claim.

In an attached statement, appellant indicated that in 2000 he began having pain and weakness in both legs as he was walking his route and realized that the condition would progress as long as he carried his route. He stated that, if he took a week off work, the pain would lessen, and that in 2004 or 2005 he was awarded an apartment route which he took because it had little walking and was mostly standing at centralized mailboxes. Appellant described his employment activity, stating that for five days weekly he would case mail on concrete floors for about three hours and then would walk on the street for another four to six hours, depending on the day and that, when he had the apartment route, he stood on concrete casing mail for two to four hours and then on concrete in apartments for another four to six hours, carrying letters, magazines and small parcels. He indicated that the pain continued and moved into his back by 2006, when he also began having penile, bladder and bowel dysfunction. Appellant stated that doctors could not give him a reason for his condition and it was not until he saw Dr. Ellis, who diagnosed cauda equina syndrome, that he realized what was causing his condition. He also reported that he was in a motor vehicle accident in 1990 when he fractured his back and had fusion surgery.

Appellant submitted medical evidence including an April 9, 2007 report in which Dr. Naveed Salahuddin, Board-certified in internal medicine and rheumatology, noted appellant's complaint of polyarthralgias and stiffness from the waist down for the past five years that had worsened in the last six months. Dr. Salahuddin stated that appellant initially thought it was related to carrying mail at work. In a January 7, 2009 report, Dr. Ellis described appellant's medical and employment history and physical examination findings. He diagnosed fractured vertebrae from a 1990 motor vehicle accident with rods and fusion from T11 through L3 and cauda equina syndrome causing bilateral peripheral nerve impairment in the lower extremities, penile sexual dysfunction, bladder dysfunction, rectal dysfunction and depression due to chronic pain. Dr. Salahuddin advised that the 1990 motor vehicle accident was the major cause of

appellant's problems and that his employment as a letter carrier put increased pressure on his spine. He concluded that appellant was unable to work.³

A notification of personnel action dated September 9, 2008 indicated that appellant was removed for physical inability to perform his duties and that his last day in pay status was May 31, 2007. The employing establishment indicated that his last date of work exposure was March 15, 2007 when he worked seven hours and that he stopped work due to nonwork-related health issues and did not report an employment injury.

By decision dated August 3, 2011, OWCP denied the claim as untimely.⁴

On August 9, 2011 appellant, through his attorney, requested a hearing before an OWCP hearing representative that was held on November 16, 2011. He submitted a September 15, 2011 report in which Dr. Ellis reiterated his findings and conclusions and stated that appellant was not aware that his employment contributed to or aggravated his back injury until being examined by him on January 7, 2009. At the hearing appellant's representative discussed medical reports of record and asserted that appellant was not reasonably aware of the relationship between his work and his medical condition until Dr. Ellis' examination in January 2009 because none of the other physicians provided a cause of appellant's leg and back pain and urological problems. Appellant described the 1990 nonemployment-related motor vehicle accident and testified that his leg pain began in 1998. He described his medical condition and indicated that he had a separate claim for a meniscus condition. Appellant stated that he had seen numerous doctors but that none had attributed his leg and back condition or his urological symptoms to work until he was seen by Dr. Ellis in 2009. He related that approximately in 2000 he noticed that the pain would get worse while walking his route and if he took time off, the pain would recede and return when he went back to work.

In a February 29, 2012 decision, OWCP's hearing representative affirmed the August 3, 2011 decision. The hearing representative found that appellant was aware or reasonably should have been aware that his condition was related to employment in 2004 or 2005 when he acknowledged changing his route to alleviate pain in his lower extremities.

In undated correspondence, received by OWCP on September 17, 2012, appellant requested reconsideration, again asserting that his claim was timely filed because he was not aware of the relationship of his medical condition and his employment until examined by Dr. Ellis on January 7, 2009. He submitted medical reports, arguing that these showed that he was having more of an internal organ complication and his legs were not that bothersome and that he spent years trying to solve the problem of his symptoms. The evidence submitted included a July 24, 2002 barium enema examination, a December 21, 2005 renal computerized tomography (CT) study and a June 15, 2006 gallbladder sonogram; treatment notes from a urology physician's assistant dated December 5, 2005 and February 6, 2006; reports from Dr. Hossein Amirani, Board-certified in internal medicine and cardiology, dated August 29, 2006

³ Appellant submitted other medical evidence describing additional medical conditions including shortness of breath and memory loss issues.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.4 (March 1993).

to May 1, 2007, who diagnosed limb pain, premature ventricular contractions, mixed hyperlipidemia and shortness of breath; and a consultation report dated August 31, 2008 with Dr. B. Theo Mellion, a Board-certified neurosurgeon, who reported appellant's complaints of bowel and bladder dysfunction and concluded that, after neurological examination and a CT myelogram of the thoracolumbar spine, it did not appear that appellant's complaints were due to spinal cord compression.

In a nonmerit decision dated December 14, 2012, OWCP denied appellant's reconsideration request on the grounds that he did not show that it erroneously applied or interpreted a point of law, that his argument had been found without merit by OWCP's hearing representative, and that he did not submit relevant or pertinent new evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁵ Section 10.608(a) of Title 20 of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated December 14, 2012 denying appellant's application for review. Because there is no OWCP merit decision within the Board's jurisdiction, the Board lacks jurisdiction to review the merits of appellant's claim.⁹

With his reconsideration request, received by OWCP on September 17, 2012, appellant did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. He asserted that his claim was timely filed because he was not aware that his medical

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(a) (2011).

⁷ *Id.* at § 10.608(b)(1)-(3).

⁸ *Id.* at § 10.608(b).

⁹ *Supra* note 1.

condition was employment related until he first saw Dr. Ellis in January 2009. Appellant, however, made this argument at the hearing, and it was reviewed by OWCP's hearing representative in her February 29, 2012 decision. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Appellant, therefore, also did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b)(3).¹¹

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted medical evidence dated from July 2, 2002 to August 31, 2008. The merit issue in this case is whether he timely filed his claim. Appellant had previously asserted at the hearing that none of the physicians he saw before Dr. Ellis diagnosed syndrome or opined that his symptoms were employment related. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹² Thus, the evidence submitted is duplicative and irrelevant regarding whether appellant's claim was timely filed.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, it properly denied his reconsideration request.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁰ *J.P.*, 58 ECAB 289 (2007).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² *J.P.*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board