

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

B.L., Appellant

and

**U.S. POSTAL SERVICE, HELENA POST
OFFICE, Helena, MT, Employer**

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**Docket No. 13-1620
Issued: November 18, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 28, 2013 appellant filed a timely appeal from a March 29, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than 180 days elapsed from the most recent merit decision dated November 23, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.²

ISSUE

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

¹5 U.S.C. § 8101 *et seq.*

²See 20 C.F.R. § 501.3(e).

On appeal, appellant contends that he submitted a December 27, 2012 medical report of Dr. Mason B. Hunter, a Board-certified orthopedic surgeon, which was sufficient to establish that he sustained a work-related condition of his feet.

FACTUAL HISTORY

On April 30, 2012 appellant, then a 60-year-old custodial laborer, filed an occupational disease claim alleging that on October 1, 2008 he first realized that he sustained an injury caused by working on his feet all day for 30 years at the employing establishment.

In an April 30, 2012 letter, the employing establishment controverted the claim, contending that appellant failed to submit any supportive factual and medical evidence.

By letter dated May 10, 2012, OWCP requested that appellant submit additional factual and medical evidence. It requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In an undated letter, appellant provided his employment history and described his work duties as a mailhandler, part-time flexible clerk and regular clerk. The positions required heavy lifting, loading and unloading trucks and carts, driving forklifts and standing 40 to 56 hours a week. Appellant described the development of his bilateral knee and foot and big toe conditions and medical treatment.

Progress notes, diagnostic test results and a hospital surgical report that addressed appellant's bilateral knee and foot and big toe conditions and medical treatment.

In an August 3, 2012 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted employment factors.

On August 14, 2012 appellant requested a review of the written record by an OWCP hearing representative. He submitted an article from the American Association of Retired Persons' magazine entitled "Keeping Your Knees Healthy." A June 1, 2012 note which contained an illegible signature stated that appellant had left knee arthritis and was scheduled to undergo knee replacement surgery on June 4, 2012. Appellant's condition was due to being on his feet for the last 30 years, lifting and twisting.

In a November 23, 2012 decision, OWCP's hearing representative affirmed the August 3, 2012 decision. He found that the medical evidence did not provide a rationalized opinion based on a complete factual and medical background explaining how appellant's left knee or bilateral foot conditions were caused by his employment duties.

By letter dated January 6, 2013, appellant requested reconsideration. He resubmitted the June 1, 2012 note and stated that it was clearly dated June 1, 2012 and signed by Dr. Hunter. Appellant also stated that Dr. Hunter's December 17, 2012 report accompanied his reconsideration request.

In a March 29, 2013 decision, OWCP denied appellant's request for reconsideration without further merit review. It found that the evidence submitted was repetitious or duplicative in nature, and insufficient to warrant further merit review of its August 3, 2012 decision. OWCP noted that Dr. Hunter's December 17, 2012 report did not accompany appellant's reconsideration request.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ 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.⁴ To be entitled to a merit review of OWCP's 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 Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

On January 6, 2013 appellant disagreed with OWCP's November 23, 2013 decision, finding that he did not sustain left knee and bilateral foot conditions causally related to the accepted employment factors. He requested reconsideration. The Board finds that appellant 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 Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered. The June 1, 2012 note of Dr. Hunter was previously of record and considered by OWCP in the November 23, 2012 decision. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁷

Appellant stated that a copy of Dr. Hunter's December 17, 2012 report accompanied his reconsideration request. The Board notes, however, that the report is not in the record.

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 his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

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)(3). OWCP properly denied appellant's January 6, 2013 request for reconsideration.⁸

On appeal, appellant contended that he submitted Dr. Hunter's new December 27, 2012 along with his request for reconsideration which was sufficient to establish that he sustained a work-related condition of his feet. As noted, the record does indicate that OWCP received the report prior to the issuance of its March 29, 2013 decision denying his reconsideration request.

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 March 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2013
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

⁸*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).