

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

T.H., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Richmond, VA, Employer)

Docket No. 13-1699
Issued: November 21, 2013

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 8, 2013 appellant, through counsel, timely appealed the June 11, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied reconsideration. The latest merit decision is dated April 25, 2012, which is more than 180 days prior to the filing of the instant appeal. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

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

¹ 5 U.S.C. §§ 8101-8193 (2006).

FACTUAL HISTORY

Appellant, a 56-year-old tax examining technician, filed a traumatic injury claim (Form CA-1) alleging that she fell at work on March 6, 2012. She claimed to have fractured three toes. Appellant also reportedly sustained injuries to her elbow and back. After further development, OWCP denied appellant's claim by decision dated April 25, 2012. It noted that, although the relevant medical evidence included diagnoses of left elbow contusion, lumbar strain and strains of the right second and third toes, the record was insufficient to establish a causal relationship between the diagnosed conditions and the March 6, 2012 employment incident.

On May 10, 2012 appellant submitted the appeal request form that accompanied the April 25, 2012 decision. She checked all available options for review.² OWCP telephoned appellant on May 17 and 21, 2012 inquiring as to which avenue of review she wished to pursue. Apparently, appellant did not respond to OWCP's various telephone messages. On May 24, 2012 OWCP advised appellant in writing that she needed to select either reconsideration, a hearing or an appeal before the Board. OWCP noted that until she advised OWCP of her preference, no further action would be taken regarding the May 10, 2012 request. Several months passed without further communication regarding the appeal request.

In January 2013 counsel notified OWCP of his authorized representation of appellant. He subsequently requested a copy of the case record which OWCP provided on March 22, 2013.

On June 4, 2013 counsel requested an oral hearing before the Branch of Hearings and Review. He noted that appellant previously filed an appeal and checked all of the boxes. In separate correspondence, also dated June 4, 2013, counsel noted that if the request for a hearing was untimely, then OWCP should regard it as a request for reconsideration. He did not submit any additional evidence with the June 4, 2013 correspondence. The only other evidence OWCP received since its April 25, 2012 decision was another copy of a March 7, 2012 medical report from Dr. John E. Bartsch, Board-certified in physical medical and rehabilitation.

By decision dated June 11, 2013, OWCP denied appellant's request for reconsideration. It noted, *inter alia*, that no new evidence had been submitted by either appellant or her representative.

LEGAL PRECEDENT

OWCP has the discretion to reopen a case for review on the merits.³ An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

² In addition to requesting reconsideration and an appeal before the Board, appellant indicated that she wanted both an oral hearing and a review of the written record by the Branch of Hearings and Review.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2) (2012).

When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

Appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by OWCP. Neither the May 10, 2012 appeal request form nor counsel's June 4, 2013 correspondence provided any insight as to the particular grounds for reconsideration. Therefore, appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).⁶

Appellant also failed to submit any "relevant and pertinent new evidence" with her request for reconsideration. The only evidence OWCP received since the April 25, 2012 decision was another copy of Dr. Bartsch's March 7, 2012 report. OWCP specifically referenced this report in its prior decision. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁷ Because appellant and/or her representative did not provide any new evidence that might arguably impact the prior decision, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).⁸

Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied merit review with respect to appellant's request for reconsideration.

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at § 10.606(b)(2)(i) and (ii).

⁷ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

⁸ 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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