

On appeal his attorney asserts that OWCP erred in issuing its decision on June 24, 2014 because appellant had 30 days in which to submit supportive evidence after he electronically filed his reconsideration request on June 19, 2014. The attorney maintains that he informed OWCP on June 19, 2014 that evidence would be sent *via* first-class mail and that the mail was forwarded that day.

FACTUAL HISTORY

As noted above, this case has previously been before the Board. In a May 6, 2014 decision, the Board affirmed a September 27, 2013 decision in which an OWCP hearing representative found that, although appellant had established one compensable factor of employment, the medical evidence of record did not establish an emotional condition in the performance of duty causally related to this accepted employment factor.³ The law and facts of the previous Board decision are incorporated herein by reference.

On June 19, 2014 appellant, through his attorney, requested reconsideration. He electronically filed the request with OWCP and indicated that he was submitting supportive medical evidence *via* first-class U.S. mail. By decision dated June 24, 2014, OWCP denied his reconsideration request on the grounds that no medical evidence was included with his request.

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.⁴ Section 10.608(a) of OWCP's regulations provide 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)(2).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ Section 10.608(b) provides that when a request

³ *Supra* note 1. On January 11, 2013 appellant, a city carrier, filed an occupational disease claim alleging that he sustained occupational stress caused by employing establishment management and a hostile work environment. He described events in which he maintained that he was subjected to intimidation, extortion, bullying, manipulation, harassment, retaliation, vindictiveness, lying, dereliction of duty and safety, incompetence, threats, and discrimination by employing establishment management from August 1, 2006 to December 27, 2012. On March 1, 2013 OWCP denied the claim as appellant had not established a compensable factor of employment. In a September 27, 2013 decision, an OWCP hearing representative affirmed the March 1, 2013 decision as modified. She found that appellant had established one compensable factor of employment that he was overworked and forced to work overtime, but that the medical evidence was insufficient to establish that his claimed emotional condition was caused by the accepted employment factor.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.608(b)(1) and (2).

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.⁷

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated June 24, 2014 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.⁸

The Board finds that appellant's argument is insufficient to require OWCP to reopen his claim for merit review. Appellant did not reference specific OWCP regulations or procedures in support of this assertion. As described above, an application for reconsideration before OWCP must be submitted in writing and set forth arguments and contain evidence that either shows that OWCP erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by OWCP, or constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹ 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.¹⁰ There is no requirement that OWCP wait 30 days for appellant to submit additional evidence.¹¹ There is every reason for OWCP to act promptly on reconsideration requests. It is difficult to see any benefit in a procedure where a claimant or an attorney could file an inadequate reconsideration request and then unilaterally reserve a period of time in which to file necessary supporting information and then designate the time at which OWCP must rule on the request. On the contrary, the Board has set aside OWCP decisions where there has been an excessive delay in deciding a reconsideration request.¹² As the argument submitted does not have a basis in law, 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)(2).¹³

With respect to the third above-noted requirement under section 10.606(b)(2), appellant had submitted no additional evidence at the time OWCP issued its June 24, 2014 decision.

⁷ *Id.* at § 10.608(b).

⁸ *Supra* note 1.

⁹ *Supra* note 6.

¹⁰ *Supra* note 7.

¹¹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2, 3, 6 (October 2011).

¹² *S.D.*, Docket No. 07-1392 (issued November 15, 2007); *S.C.*, Docket No. 04-1562 (issued December 1, 2005).

¹³ 20 C.F.R. § 10.606(b)(2); *see R.M.*, 59 ECAB 690 (2008).

Employees' Compensation and Management Portal is the portal on OWCP's Division of Federal Employment Compensation website for electronic filing. It also allows a case stakeholder to upload documents to an existing case.¹⁴ Thus, appellant's attorney was not precluded from uploading the supportive evidence electronically rather than forwarding it by U.S. mail. Conversely, there is no OWCP requirement that a reconsideration request must be filed electronically.¹⁵

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or constitute relevant and pertinent new evidence not previously considered by OWCP, OWCP 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).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ See FECA Circular No. 13-03 (issued February 14, 2013).

¹⁵ *Supra* note 11.