

On appeal, appellant contends that he requires medical treatment for his accepted employment-related injuries.

FACTUAL HISTORY

This case has previously been before the Board on several occasions.³ The facts relevant to the current appeal are set forth below.

OWCP accepted that appellant, then a 37-year-old machine distribution clerk, sustained an employment-related volar plate avulsion fracture of the right index finger on September 27, 1992 under OWCP File No. xxxxxx973. It subsequently accepted employment-related carpal tunnel syndrome of the right wrist and a right scapholunate ligament tear under File No. xxxxxx698.⁴ In a February 2, 1995 decision, OWCP granted appellant a schedule award for 56 percent impairment of the right upper extremity.

On July 9, 2012 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability in February 2012 due to everyday use of his hand, wrist and fingers.⁵ He stated that his pain and restrictions had worsened.

By letter dated August 27, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. Appellant was afforded 30 days to submit the requested evidence. He did not respond within the allotted time period.

In an October 4, 2012 decision, OWCP denied appellant's claim for a recurrence of disability. It found that he failed to submit any factual or medical evidence to establish his claim.

By letter dated July 26, 2013, appellant requested reconsideration, contending that his delay in submitting the requested medical evidence was due to the failure of medical workers at the Department of Veterans Affairs (VA) to prepare his paperwork.

In an August 6, 2012 letter, the VA stated that the requested medical documentation was delayed by administrative processes at its St. Louis Medical Center.

³ Docket Nos. 98-2419 (issued April 10, 2000); 02-1052 (issued October 18, 2002); 03-2007 (issued October 30, 2003); 04-592 (issued January 26, 2005); and 05-1359 (issued November 17, 2005). In its most recent decision dated February 16, 2007, the Board found that OWCP properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that his reconsideration request was untimely filed within one year of OWCP's October 1, 1998 decision and failed to show clear evidence of error in OWCP's decision that the evidence of record was insufficient to establish that appellant sustained a left wrist injury causally related to factors of his federal employment. Docket No. 06-1403 (issued February 16, 2007).

⁴ The record indicates that OWCP combined appellant's claims under File Nos. xxxxxx698 and xxxxxx973 into master File No. xxxxxx973.

⁵ Appellant stopped work at the employing establishment on June 14, 1994. He was removed from the employing establishment on February 7, 1995 in accordance with a decision of the Merit Systems Protection Board.

In a September 11, 2013 decision, OWCP denied appellant's request for reconsideration without a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁶ 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.⁷ 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.⁸ 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.⁹

ANALYSIS

On July 26, 2013 appellant disagreed with OWCP's October 4, 2012 decision, finding that he did not sustain a recurrence of disability causally related to his accepted employment-related injuries. He requested reconsideration. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, he 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 underlying issue in this case is whether appellant sustained a recurrence of disability causally related to his accepted employment-related injuries. That is a medical issue which must be addressed by relevant new medical evidence.¹⁰ Appellant's July 26, 2013 letter and the VA's August 6, 2012 letter addressed their delay in submitting the medical documentation requested by OWCP. No medical evidence was submitted regarding the claimed recurrence of disability. Since, as noted, the underlying issue is medical in nature, these letters are not relevant as appellant and the VA merely explained the delay in submitting the requested medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹¹

⁶ 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).

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹⁰ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ *D'Wayne Avila*, 57 ECAB 642 (2006).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). He did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contended that he requires medical treatment for his accepted employment-related injuries. As discussed above, appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim. Therefore, OWCP properly denied his request for reconsideration.

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 September 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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