

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

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**E.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Portland, ME, Employer**

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**Docket No. 14-79  
Issued: May 8, 2014**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 10, 2013 appellant filed a timely appeal from a July 1, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed since the most recent merit decision dated March 19, 2013 and the filing of this appeal on October 10, 2013, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On December 18, 2012 appellant, a 47-year-old letter carrier, filed a claim alleging that he slipped and fell on the grass while delivering mail and injured his left ankle. He stopped work on December 18, 2012.

In reports dated December 18 and 19, 2012, a nurse practitioner noted that appellant presented with left lateral ankle pain and swelling after slipping and falling on his left leg and ankle while delivering mail on December 18, 2012. She diagnosed hypertension, knee and ankle sprain. In duty status reports dated December 19 and 27, 2012, the nurse practitioner diagnosed left ankle sprain and noted that appellant would be disabled for one week. In reports dated December 27, 2012 and January 3, 2013, she noted that appellant reported falling on December 18, 2012 while delivering mail. The nurse practitioner diagnosed ankle sprain and advised that appellant would be off work another week and then be returned to light duty.

By letter dated January 14, 2013, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time lost from work. It indicated that his claim was administratively handled to allow medical payments up to \$1,500.00 but the merits of the claim had not been formally adjudicated. OWCP advised that, because he had not returned to full duty, appellant's claim would be formally adjudicated. It requested that he submit additional information including a comprehensive medical report from his treating physician with a reasoned explanation as to how the specific work factors contributed to his claimed left ankle and knee injury. OWCP advised that a nurse practitioner was not considered to be a physician under FECA.

Appellant submitted reports from a nurse practitioner dated January 10 and 17, 2013. The nurse practitioner noted that appellant presented with a swollen posterolateral aspect of the ankle and antalgic gait. She diagnosed ankle sprain and returned appellant to work two hours a day with limited standing and sitting. In reports dated January 24 to February 13, 2013, the nurse practitioner treated appellant in follow up for severe ankle sprain and persistent swelling. She diagnosed ankle sprain and released appellant to full-time work with restrictions.

In a decision March 19, 2013, OWCP denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

In a March 31, 2013 appeal request form, appellant requested reconsideration. No additional medical evidence was submitted.

In a July 1, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

### LEGAL PRECEDENT

Under section 8128(a) of FECA,<sup>3</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(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.”<sup>4</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>5</sup>

### ANALYSIS

OWCP’s most recent merit decision dated March 19, 2013 denied appellant’s claim without a merit review and appellant appealed this decision to the Board.

As noted, the Board does not have jurisdiction over the March 19, 2013 OWCP decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. The Board notes that the underlying issue in this case is whether appellant sustained a work-related ankle and knee injury. That is a medical issue which must be addressed by relevant medical evidence.<sup>6</sup> However, appellant submitted no new and relevant medical evidence in support of his claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) requiring OWCP to reopen the case for review of the merits of the claim. Appellant 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 constitute

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2014  
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