

FACTUAL HISTORY

On May 14, 2012 appellant, then a 65-year-old budget clerk, filed a traumatic injury claim alleging that on August 28, 1997 he sprained his lower back while moving office furniture. He did not stop work. The employing establishment indicated that it had received notice of the claim on May 11, 2012 and that appellant had retired on December 1, 1997. It asserted that the claim was not timely filed.

By letter dated May 16, 2012, OWCP acknowledged receipt of the claim. In a letter dated May 30, 2012, it advised appellant that the evidence was insufficient to show that he timely filed his claim. OWCP requested that he submit evidence establishing that he filed his claim within three years of the date of injury or that his immediate supervisor had actual knowledge of the injury within 30 days. The letter was not properly addressed and was returned to sender.

By decision dated July 2, 2012, OWCP denied appellant's claim on the grounds that it was not timely filed. It determined that he had not filed his claim within three years of the date of injury or demonstrated that his supervisor had actual knowledge of the injury within 30 days.

On June 17, 2014 appellant requested reconsideration. He submitted medical evidence from 1990 and 1997 and a December 10, 2004 statement to OWCP regarding a 1990 claim.

By decision dated July 3, 2013, OWCP denied modification of its July 2, 2012 decision. It determined that appellant had not submitted any evidence supporting that his claim was timely filed under 5 U.S.C § 8122.

On August 21, 2013 appellant again requested reconsideration of his claim. He related that OWCP mailed him letters on March 7 and May 30, 2012 that were incorrectly addressed. Appellant indicated that he received the letters in the middle of June 2013. He asserted that OWCP denied his claim because he did not timely respond to OWCP's letters of March and May 2012.

By letter dated August 28, 2013, OWCP asked that appellant specify the decision from which he was requesting reconsideration and the issue involved.

On September 30, 2013 appellant requested reconsideration of a "recent rejection notice decision." He related that he did not have any problems with his lower back until his injuries in 1990 and 1997. In a report dated August 29, 2013, a physician noted that appellant sustained an injury to his low back at work on February 28, 1990 and received treatment from 1990 to 2003 for occasional low back pain, including numerous times in 1997. The physician diagnosed lumbosacral strain and progressive traumatic degenerative disc disease.

By letter dated October 24, 2013, appellant requested reconsideration of the July 2, 2012 decision. He related that OWCP letters dated March 7, May 16 and 30, 2012 were returned to sender and only received in the middle of June 2013; consequently, he could not timely respond to the letters. In an unsigned medical report dated February 24, 2003, a physician diagnosed degenerative joint disease of the left knee and low back pain with degenerative arthritis.

By decision dated January 10, 2014, OWCP denied appellant's request to reopen his case for further merit review under section 8128. It found that he had not submitted evidence or raised an argument relevant to the determination of whether his claim was timely filed.

On appeal, appellant asserts that the medical evidence shows that he has degenerative arthritis from a back injury. He also maintains that he wants to appeal the denial of a 1990 claim for low back sprain. Appellant relates that he believes prior back injuries contributed to his current condition.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ 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.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁸

ANALYSIS

In the last merit decision dated July 3, 2013, OWCP denied modification of its finding that appellant had not established that he timely filed his traumatic injury claim. On October 24, 2013 appellant requested reconsideration.

² 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁷ *See P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *See Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

As noted above, the Board does not have jurisdiction over the July 3, 2013 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further 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. He argued that he did not receive March 7 and May 16 and 30, 2012 letters from OWCP until the middle of June 2012. The underlying issue in this case is whether appellant has established that he filed his traumatic injury claim within three years of the date of injury or that his supervisor had actual knowledge of the injury within 30 days.⁹ The record does not contain a letter from OWCP to appellant dated March 7, 2012 under the current file number. OWCP acknowledged receipt of appellant's claim in its May 16, 2012 letter. On May 30, 2012 it advised him of the type of evidence necessary to establish his claim. While the March 7 and May 30, 2012 letters were not properly addressed, appellant received the letters by the middle of June 2013 and had the opportunity to provide additional evidence to OWCP with his reconsideration request. Consequently, his allegation has no reasonable color of validity.¹⁰ Appellant also submitted medical evidence but the evidence did not address the issue of whether he timely filed a claim for an August 28, 1997 employment injury. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹¹

On appeal, appellant asserts that he wants to appeal the denial of a 1990 claim for low back sprain. He maintains that his previous back injuries contributed to his current condition. The Board's jurisdiction, however, is limited to reviewing final adverse decisions of OWCP filed within 180 days.¹² Consequently, these issues are not before the Board at this time.

On appeal, appellant relates that the medical evidence establishes that he has degenerative arthritis from a back injury. As discussed, however, the issue is whether he submitted new evidence or raised a new argument relevant to the underlying issue of whether he timely filed his claim for an August 28, 1997 traumatic injury. The medical evidence submitted is not relevant to this issue and thus insufficient to warrant reopening appellant's case for further merit review.¹³

⁹ Section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that, in latent disability cases, the time limitation does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. Even if a claim was not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119. *See* 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also* *Larry E. Young*, 52 ECAB 264 (2001).

¹⁰ *See supra* note 8.

¹¹ *See J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

¹² 20 C.F.R. §§ 501.2(c) and 501.3.

¹³ *Id.*

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 submit relevant and pertinent new 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 to reopen his claim for further review of the merits under section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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