

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

J.A., Appellant)	
)	
and)	
)	Docket No. 14-1447
)	Issued: October 21, 2014
DEPARTMENT OF THE ARMY, ARMY)	
DEPOT, Corpus Christi, TX, Employer)	
)	

Appearances:
Kenneth A. Weeks, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2014 appellant, through his representative, filed a timely appeal from the February 25, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 denied appellant's reconsideration request under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 3, 2002 appellant, a 43-year-old pneudraulics systems mechanic, claimed a traumatic injury in the performance of duty when, while walking down stairs, his right foot

¹ 5 U.S.C. § 8101 *et seq.*

slipped, his right knee twisted and he heard a popping sound. OWCP accepted his claim for right knee sprain/strain and right medial meniscus tear.

Appellant underwent two authorized arthroscopic surgeries. On January 18, 2006 he received a schedule award for a 22 percent impairment of his right lower extremity.

In 2011 appellant underwent a total right knee replacement. On August 23, 2013 he received an additional schedule award of 3 percent, representing a total right lower extremity impairment of 25 percent.

On January 21, 2014 appellant submitted an appeal request form indicating with a checkmark that he wished to request reconsideration of the August 23, 2013 schedule award. OWCP received this request on January 29, 2014.

In a decision dated February 25, 2014, OWCP denied appellant's reconsideration request. It found that the request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the prior decision.

Appellant contends on appeal that an impairment rating of April 23, 2013 showed a greater impairment.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608.

ANALYSIS

The Board has no jurisdiction to review the August 23, 2013 additional schedule award. Appellant had 180 days, or until February 19, 2014, to appeal that decision to the Board. The only decision that the Board may now review is OWCP's February 25, 2014 nonmerit decision denying his reconsideration request.

OWCP received appellant's reconsideration request within one calendar year of the August 23, 2013 schedule award decision. Appellant's request was therefore timely. The question for determination is whether this request met at least one of the three standards for obtaining a merit review of his case.

Appellant's request consisted solely of an appeal request form and a checkmark indicating that he wished to request reconsideration. He offered no argument or evidence to support his request. Appellant provided no reason why he wanted OWCP to reconsider the additional schedule award. Such a bare request is insufficient on its face to warrant a reopening of his case.⁶

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. It did not advance a relevant legal argument not previously considered by OWCP nor did it contain relevant and pertinent new evidence not previously considered by OWCP.

As appellant's request did not meet at least one of these standards, the Board finds that OWCP properly denied the request. The Board will therefore affirm OWCP's February 25, 2014 decision.

CONCLUSION

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

⁶ X.R., Docket No. 12-373 (issued June 1, 2012).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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