

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

A.W., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Chattanooga, TN,
Employer**)

**Docket No. 14-1073
Issued: September 15, 2014**

Appearances:

*Alan J. Shapiro, Esq., 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 April 7, 2014 appellant, through counsel, filed a timely appeal from the February 26, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied her reconsideration request. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

ISSUE

The issue is whether OWCP properly denied appellant's reconsideration request.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On the prior appeal,² the Board found that appellant had not met her burden of proof to establish that her medical condition was causally related to the July 6, 2012 work incident.³ Dr. Peter J. Lund, a Board-certified orthopedic surgeon, found appellant's clinical presentation did not seem consistent with the mechanism of injury. He concluded that it was not clear that there could be a relationship between what happened on July 6, 2012 and the changes seen on x-ray. As no physician offered a well-reasoned opinion as to whether the July 6, 2012 work incident caused a diagnosed medical condition, the Board affirmed OWCP's September 4, 2012 decision to deny appellant's injury claim. The Board also found that OWCP properly denied appellant's October 10, 2012 reconsideration request. The facts of this case as set forth in the Board's May 22, 2013 decision are hereby incorporated by reference.

While the case was on appeal to the Board, appellant's counsel requested reconsideration by OWCP. He resubmitted a copy of Dr. Lund's August 1, 2012 report, which the Board had reviewed on appeal.

Following the issuance of the Board's May 22, 2013 decision and order, appellant's counsel asked OWCP to proceed with the previously submitted reconsideration request. It received this request on February 7, 2014.

In a decision dated February 26, 2014, OWCP denied a merit review of appellant's case. It found that the evidence submitted was repetitious and irrelevant.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁴ 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.⁵

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.⁶

² Docket No. 13-435 (issued May 22, 2013).

³ Appellant, a 50-year-old mail processing clerk, filed a traumatic injury claim alleging that she injured her right shoulder on July 6, 2012 while pulling a tray with her right arm from the top of a bun warmer for dispatch. "Felt pain in right shoulder lost control of tray. Used left arm to catch tray and balance it, felt pain in left elbow."

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606.

⁶ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ The one-year period begins on the date of the original decision; however, a right to reconsideration within one year accompanies any subsequent merit decision. This includes any decision after a hearing or review of the written record, any denial of modification following a reconsideration, any merit decision by the Board, and any merit decision following a remand from the Branch of Hearings and Review or the Board, but does not include prerecoupment hearing decisions.⁸

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 the standards for review. 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.⁹

ANALYSIS

While the Board had jurisdiction of this case on the prior appeal, appellant's counsel requested that OWCP reconsider the merits. It is well established, however, that the Board and OWCP may not exercise concurrent jurisdiction over the same issue. Any action by OWCP that can disturb the status of the case as appealed from must necessarily be regarded as a nullity; otherwise, the orderly appeal process breaks down.¹⁰ Accordingly, the reconsideration request that appellant submitted to OWCP during her appeal to the Board was not ripe for want of jurisdiction.

Following the appeal, appellant's representative asked OWCP to proceed with reconsideration. OWCP received this request on February 7, 2014. As this receipt was within one year of the most recent merit decision in the case, namely, the May 22, 2013 Board decision, the request was timely. The question for determination, therefore, is whether appellant's request meets at least one of the three standards for obtaining a merit review of her case.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. The request did not advance a relevant legal argument not previously considered by OWCP. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP, but appellant only resubmitted a copy of the August 1, 2012 report from Dr. Lund, the orthopedic surgeon. The Board reviewed this evidence on the prior appeal and found that it did not establish the element of causal relationship. The Board has held that evidence that repeats or duplicates that already in the record has no evidentiary value and constitutes no basis for reopening a case.

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4.a (October 2011).

⁹ *Id.* at § 10.608.

¹⁰ *Douglas E. Billings*, 41 ECAB 880 (1990), citing *George H. Thamer*, 2 ECAB 88 (1948).

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening her case, the Board finds that OWCP properly denied a merit review. The Board will therefore affirm OWCP's February 26, 2014 decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 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