

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

A.T., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Lancaster, CA, Employer)

Docket No. 15-1727
Issued: December 2, 2015

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2015 appellant filed a timely application for review from a June 9, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from January 20, 2015, the date of the most recent merit decision of OWCP, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 24, 2013 appellant, then a 42-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed pain in the left foot as a result of walking her route. She became aware of her condition and of its relationship to her employment on June 7, 2013.

Appellant submitted a July 11, 2013 report from Dr. Donna Asimont, a Board-certified family physician. The report contained a diagnosis of “traumatic injury of [left] foot.” Appellant also submitted a narrative statement dated August 3, 2013.

By letter dated July 29, 2013, OWCP advised appellant of the evidence needed to establish her claim. It afforded her 30 days to submit additional evidence.

By decision dated August 30, 2013, OWCP denied appellant’s claim. It noted that she had not submitted medical evidence including a diagnosis from a qualified physician.

On June 19, 2014 appellant requested reconsideration of her claim. She included a report from Dr. Asimont dated September 13, 2013, which included a diagnosis of accessory left tarsal navicular bone exostosis.

By decision dated September 22, 2014, OWCP evaluated the merits of appellant’s claim and affirmed its August 30, 2013 decision, but with modification. It found that she had submitted sufficient evidence to demonstrate that she had been diagnosed with a medical condition, but had not submitted sufficient evidence to establish a causal relationship between this condition and factors of her federal employment.

Appellant again requested reconsideration by form dated October 6, 2014. With her request, she submitted an October 22, 2014 report from Dr. Vikas Jindal, Board-certified in occupational medicine. In the report, Dr. Jindal stated: “I strongly feel that this employee had this mild bone growth for a long time[...] I cannot establish the exact origin date but this had definitely been aggravated by excessive and prolonged walking during work as mail carrier[...] Hopefully you will consider my causation statement appropriate for approval of this case.”

By decision dated January 20, 2015, OWCP evaluated the merits of appellant’s claim, but found that Dr. Vikas’ report was not sufficient to establish appellant’s claim as it was expressed equivocally and his opinion was not one of reasonable medical certainty.

On May 17, 2015 appellant requested reconsideration for the third time. On the form requesting the appeal, she wrote, “I am requesting reconsideration in hopes that in Dr. Jindal’s report he has completely satisfied the basic five elements that my previous report lacked.” Appellant did not submit any additional evidence.

By decision dated June 9, 2015, OWCP denied appellant’s request for reconsideration without reviewing the merits of her claim, noting that she had not submitted any additional evidence in support of her request.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by 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.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

OWCP issued a January 20, 2015 decision finding that appellant had not established an occupational disease related to factors of her federal employment. This decision found that Dr. Jindal's October 22, 2014 report was not sufficient to establish that duties of appellant's federal employment caused or aggravated her diagnosed condition. On May 17, 2015 appellant requested reconsideration of this decision. With her request, she submitted no additional evidence, and wrote "I am requesting reconsideration in hopes that in Dr. Jindal's report he has completely satisfied the basic five elements that my previous report lacked," on the reconsideration request form.

As noted above, the Board does not have jurisdiction over the merits of the January 20, 2015 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 review of the merits of her claim. In her May 17, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. The argument contained in the note written on the request form regarding Dr. Jindal's report was previously considered in OWCP's January 20, 2015 decision. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant did not submit any new or relevant evidence in this claim upon requesting reconsideration. Thus, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(3).

The Board accordingly 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.

² 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

³ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2015 is affirmed.

Issued: December 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board