

FACTUAL HISTORY

On September 10, 2013 appellant, then a 50-year-old material handler, filed a traumatic injury claim alleging that on July 23, 2013 he injured his lower right back while stocking shelves.

In correspondence dated September 13, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

Following the September 13, 2013 letter, OWCP received the following evidence. In a July 23, 2013 disability note, Megan Jackson, RN, stated that appellant was seen that day and that he was disabled from work for the period July 25 to 26, 2013.

In an undated report, Dr. Todd Quier, a treating Board-certified family practitioner, reported that appellant was seen on August 2, 2013 at the emergency room for back pain. He related that appellant had been out of work since July 23, 2013 and that appellant believed that he could return to work that day, August 2, 2013. Dr. Quier related that he had not examined appellant so that he could not provide restrictions or recommendations. On August 12, 2013 he reported that he had evaluated appellant that day, and opined that he was totally disabled for the period August 5 to 12, 2013, but could return to modified duty with restrictions as noted for the period August 12 to 25, 2013.

Dr. Quier noted in an October 11, 2013 report that appellant had been seen in the employing establishment's emergency room on July 23, 2013 for complaints of acute back pain. He attributed the acute back pain to appellant "pulling something at work, while bent over." Dr. Quier noted that the acute back pain was caused by acute spasm in the lower back. On August 6, 2013 appellant reaggravated his back and was seen again in the employing establishment's emergency room. In concluding, Dr. Quier reported seeing appellant on August 12, 2013, that his condition was improving, and that he returned appellant to light duty for two weeks.

In a July 24, 2013 work excuse form, Dr. Katharine Davidson, a Board-certified emergency room physician, stated that appellant had been seen that day at the employing establishment's emergency room and released to work on July 25, 2013.

By decision dated October 30, 2013, OWCP denied appellant's claim, finding that fact of injury had not been established. It found that the July 23, 2013 incident occurred as alleged, but that the medical evidence of record failed to contain a diagnosis in connection with the July 23, 2013 incident. OWCP stated that pain and spasm are considered symptoms and not diagnoses.

On September 25, 2014 OWCP received appellant's request for reconsideration dated September 24, 2014. Appellant noted that he had additional evidence from his physician to submit. No medical evidence was submitted with appellant's request.

By decision dated October 8, 2014, OWCP denied reconsideration. It found that appellant failed to meet the requirements under 20 C.F.R. § 10.606 as he had not submitted any factual or medical evidence with his request or raised a substantive legal argument.

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

ANALYSIS

OWCP accepted that the July 23, 2013 employment incident occurred as alleged, but found that appellant had failed to establish fact of injury, as the medical evidence was insufficient to establish that a medical condition had been diagnosed in connection with the July 23, 2013 employment incident. On September 24, 2014 appellant disagreed with OWCP's denial of his claim and requested reconsideration.

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 the claim. In his September 24, 2014 request for reconsideration, appellant failed to show that OWCP had erroneously applied or interpreted a specific point of law. He also failed to advance a new and relevant legal argument not previously considered by OWCP. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any evidence in support of his request. Appellant stated that new medical evidence would be submitted from his physician, but none was received by OWCP at the time of issuance of the October 8, 2014 decision.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the 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). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁵ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 8, 2014 is affirmed.

Issued: July 16, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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