

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

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E.O., Appellant )

and )

**DEPARTMENT OF THE NAVY, NAVAL AIR  
WARFARE CENTER, China Lake, CA,  
Employer** )

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**Docket No. 15-635  
Issued: June 5, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 27, 2015 appellant filed a timely appeal from the September 3, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Since more than 180 days has elapsed between the last merit decision on February 11, 2014 and the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

**ISSUE**

The issue is whether OWCP properly declined to reopen appellant's case, pursuant to 5 U.S.C. § 8128(a), for further consideration of the merits of his claim.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 3, 2009 appellant, a 41-year-old computer scientist, sustained an injury in the performance of duty when his vehicle slid and rolled over. OWCP accepted his claim for lumbar sprain and multiple contusions. It also accepted a sprain of the shoulder and upper arm, and a rotator cuff and other unspecified conditions of the shoulder region.

In a decision dated February 11, 2014, OWCP denied appellant's claim for reimbursement for mileage in excess of 100 miles and for wage-loss compensation in excess of four hours a day to attend medical appointments. It explained that reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services is established at 50 miles (one way) to obtain such services and four hours as the standard for reimbursement for wage loss due to medical appointments.

On July 28, 2014 OWCP received appellant's July 22, 2014 appeal request form indicating, with a mark, that he was requesting reconsideration of the February 11, 2014 decision.

The record contains reports of various diagnostic tests, medical examinations, and treatment plans from the following medical providers: Southern Sierra Medical Clinic, Ridgecrest, CA; The Hand and Wrist Institute of Beverly Hills, CA; AVORS Medical Group, Lancaster, CA; and Dr. Eric S. Millstein, a Board-certified orthopedic surgeon and sports injury specialist.

In a decision dated September 3, 2014, OWCP denied appellant's reconsideration request. It found that because he did not submit any additional evidence with his appeal request form, it was insufficient to warrant a review of the February 11, 2014 decision. OWCP added that although it had received various medical reports since February 11, 2014, they did not address the issue of reimbursement for excess travel and wage loss to attend medical appointments.

On appeal, appellant offers a letter and documentation to explain his reason for receiving physical therapy more than 50 miles from his residence and his argument that he is entitled to mileage reimbursement for that travel.

## **LEGAL PRECEDENT**

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>2</sup> 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

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<sup>2</sup> *Id.* at § 8128(a).

not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

OWCP received appellant's reconsideration request within one year of its February 11, 2014 decision. Appellant's request is therefore timely. The question for determination is whether that request met at least one of the three standards for reopening his 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. Also the request did not contain relevant and pertinent new evidence not previously considered by OWCP. Indeed, appellant submitted no argument or evidence to support his reconsideration request. Appellant did nothing more than indicate his appeal preference. Such a bare request is insufficient, on its face, to warrant a reopening of his case.<sup>6</sup>

The medical evidence received by OWCP since February 11, 2014 is irrelevant to the issue decided on that date. OWCP denied reimbursement because it had exercised its discretion to place some limit, applicable to all claimants, on the reimbursable distance one may travel to receive medical services and the number of reimbursable hours one may claim for a medical appointment. The Board has held that evidence which does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>7</sup>

Accordingly, as appellant's reconsideration request did not meet at least one of the three standards for reopening his case, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's September 3, 2014 decision.<sup>8</sup>

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<sup>3</sup> 20 C.F.R. § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

<sup>7</sup> *See Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>8</sup> The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

**CONCLUSION**

The Board finds that appellant is not entitled to a merit review. Appellant's reconsideration request did not meet at least one of the three standards for reopening his case.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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