

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

T.L., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Campbell, KY, Employer**

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**Docket No. 15-177
Issued: March 24, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2014 appellant filed a timely appeal of the October 3, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days has elapsed since the most recent merit decision dated October 9, 2013 and the filing of this appeal on November 3, 2014, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration without a merit review.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 21, 2000 appellant, then a 58-year-old automotive worker, filed a Form CA-1, traumatic injury claim, alleging that on March 24, 2000 while unloading engine parts from a pallet he slipped and twisted his right thigh. OWCP accepted his claim for meralgia paresthetica. Appellant did not stop work.

Appellant was treated by Dr. Curtis J. Hagenan, a Board-certified neurologist, on April 17, 2000, for numbness and paresthesias over the anterolateral aspect of his right thigh. He reported offloading engine parts from a pallet and twisting and feeling right thigh discomfort, numbness, and dysesthesias. Dr. Hagenan diagnosed meralgia paresthetica. He opined that when appellant slipped two weeks prior he irritated the right lateral femoral cutaneous nerve in the inguinal region producing sensory disturbance in the thigh. In an attending physician's report dated April 17, 2000, Dr. Hagenan diagnosed meralgia paresthetica. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by a work activity.

On September 4, 2013 appellant filed a Form CA-2a, notice of recurrence of disability, asserting that since the date of his original injury he had continuous numbness and tingling on the upper right leg. He did not stop work.

By letter dated September 9, 2013, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. Appellant's claim had been administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because he had filed a notice of recurrence, his claim would be formally adjudicated. It requested that appellant submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed right thigh injury.

In a statement dated September 9, 2013, appellant indicated that his condition was related to the injury that occurred on March 24, 2000 and noted the affected area on his thigh had gotten worse. He claimed to not have sustained any other injury. Appellant stated that his condition was not a recurrence but a continuation of symptoms from the original injury. He submitted an attending physician's report from Dr. Hagenan dated April 17, 2000 and a Form CA-1 notice of traumatic injury, previously of record. Appellant submitted a note from a physician assistant at the employing establishment health clinic dated April 19, 2000 finding that he could return to full duty.

On October 9, 2013 OWCP accepted appellant's claim for meralgia paresthetica, and by a second decision of the same date it also denied appellant's claim for a recurrence of disability. It determined that he had failed to establish disability due to a material change/worsening of his accepted work-related conditions. OWCP found that there was no medical evidence supporting that appellant continually sought treatment for the injury or any medical reports addressing how his current need for treatment was due to his work duties and not to other factors

Appellant requested reconsideration on September 30, 2014 and asserted that he continued to have residuals of his work-related injury of March 24, 2000. He noted that his

physician had retired, that he was scheduling an appointment with the new physician, and that he would provide documentation in support of his claim. No additional evidence was submitted.

In an October 3, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(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

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP denied appellant's recurrence of disability claim on the grounds that he failed to establish that he was disabled due to a material change or worsening of his accepted work-related conditions. Thereafter, it denied his reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument.

In his letter dated September 30, 2014, appellant asserted that he still had residuals of his work-related injury of March 24, 2000. He advised that his physician retired and that he would provide documentation in support of his claim after seeing his new physician. No additional

² *Id.* at § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

evidence was submitted prior to the decision. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant sustained a recurrence of disability causally related to his March 24, 2000 work injury. That is a medical issue which must be addressed by relevant new medical evidence.⁵ Appellant did not submit any new and relevant medical evidence in support of his claim. He noted that new evidence would be submitted but no additional evidence was received.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant's asserts that he continued to have residuals of his accepted work injury of March 24, 2000 and should be compensated. He further asserts that OWCP did not provide him adequate time to submit medical evidence in support of his claim. As explained, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

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

Issued: March 24, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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