

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

C.T., claiming as widow of L.T., Appellant)

and)

U.S. POSTAL SERVICE, BULK MAIL)
CENTER, Dallas, TX, Employer)

**Docket No. 14-806
Issued: May 22, 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 June 1, 2013 appellant filed a timely appeal of a December 4, 2012 decision of the Office of Workers' Compensation Programs (OWCP), denying her application for reconsideration without merit review of the claim.¹ Since more than 180 days has elapsed between the last merit decision on November 11, 2011 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

¹ The Board initially issued an order dismissing appeal dated May 12, 2014, because appellant had not submitted a timely appeal of the December 4, 2012 OWCP decision. By order dated September 9, 2014, the Board reinstated the appeal, finding that appellant submitted evidence that the appeal was mailed on May 29, 2013, which was within 180 days of the December 4, 2012 decision. 20 C.F.R. § 501.3(e) and (f). The Board also issued an order dated March 23, 2015, denying appellant's request for an oral argument.

² 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

On July 31, 1995 the employee, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury in the performance of duty on July 15, 1995. He alleged that he was hit in the back with a bag of mail. OWCP accepted the claim for a lumbar sprain. The employee returned to a light-duty job and filed a claim for a recurrence of disability from April 7 to 26, 1996, which was accepted by OWCP. In a report dated September 8, 2004, Dr. Huntly Chapman, a Board-certified orthopedic surgeon, stated that the employment-related diagnosis was herniated nucleus pulposus at L4-5 and L5-S1.

On November 25, 2008 appellant filed a Form CA-7 (claim for compensation) and indicated that she was seeking a schedule award (in the claim of her now deceased husband). She submitted a report dated November 25, 2006 from Dr. Steven Mueller, a Board-certified anesthesiologist, who indicated that the employee had died on November 24, 2006. Dr. Mueller reported that the employee had been admitted to the hospital on November 16, 2006, and that the primary cause of death was squamous cell carcinoma of the left lung, complicated by regional metastases, with involvement of the heart and pericardium. In a report dated December 31, 2008, an OWCP medical adviser opined that the evidence did not support that the employee's death was causally related to his federal employment.

On April 2, 2009 appellant filed a Form CA-5 claim for compensation by widow. He submitted a death certificate dated November 24, 2006 signed by Dr. Mueller. The immediate cause of death was reported as squamous cell carcinoma of the lungs, with contributing factors reported as acute respiratory distress syndrome (ARDS), multisystem organ failure, and coronary artery disease. Appellant also resubmitted the November 25, 2006 report from Dr. Mueller.

In a decision dated May 5, 2009, OWCP denied the claim for compensation. It found the evidence did not establish that the employee's death was causally related to federal employment or his employment injury.

Appellant requested reconsideration and submitted an April 29, 2009 report from Dr. Chapman, who stated that the employee's job injury and associated stresses of that injury were a "producing cause" of the employee's problems and ultimate death.

By decision dated September 10, 2009, OWCP reviewed the merits of the claim and denied modification. In a letter dated April 30, 2010, appellant, through her representative, requested reconsideration. Appellant argued that the employee had low back problems that included herniated discs and multiple medications. The evidence submitted included a December 11, 2007 decision from the Department of Veterans Affairs (VA) which indicated that the employee's death was accepted as service related.

In a decision dated August 6, 2010, OWCP reviewed the merits of the claim and denied modification. It noted that the issue of whether a herniated disc was employment related was not directly relevant to the issue presented of whether the employee's death was employment related. By decision dated June 29, 2011, OWCP found that appellant's application for reconsideration was insufficient to warrant review of the merits of the claim.

By letter dated August 2, 2011, appellant's representative again requested reconsideration. He argued that the employee had employment-related herniated discs, and the herniated discs, increased medication, and elevated pain levels were contributing factors to his death. Appellant submitted a July 20, 2011 report from Dr. Chapman, opining that the employee had disc herniations, as demonstrated by a June 9, 1999 MRI scan. Dr. Chapman opined that the employment injury on July 15, 1995 had aggravated a preexisting condition and caused herniated discs.

By decision dated November 1, 2011, OWCP again reviewed the merits of the claim and denied modification. It found the evidence was insufficient to warrant modification of the denial of the claim.

Appellant again requested reconsideration on May 11, 2012. By decision dated May 31, 2012, OWCP found the evidence was insufficient to warrant a review of the merits of the claim.

In a letter dated October 29, 2012, appellant requested reconsideration. She stated that she was asking for an upgrade from a back sprain to a herniated disc. Appellant resubmitted reports dated September 8, 2004 and July 20, 2011 report from Dr. Chapman. She also submitted the August 2, 2011 reconsideration request from her former representative.

By decision dated December 4, 2012, OWCP found the evidence was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁴ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁵

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS

In the present case, appellant requested reconsideration of her claim by letter dated October 29, 2012. She did not attempt to show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Appellant stated that she wanted to expand the claim to include a herniated disc. She had previously argued that the employee (her spouse) had sustained an employment-related herniated disc and this was a contributing factor to his death.

As to the third standard noted above, appellant did not submit relevant and pertinent evidence not previously considered by OWCP. The underlying issue in the case was a medical issue as to whether the employee's death on November 24, 2006 was causally related to his federal employment or an employment-related injury. The September 8, 2004 and July 20, 2011 reports from Dr. Chapman were previously submitted and are not new evidence. The August 2, 2011 reconsideration request had been previously submitted and does not constitute new evidence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). She 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 constitute relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to review the merits of the claim.

On appeal, appellant resubmitted evidence of record. She argued that the medical evidence established her claim. As noted above, the issue before the Board was whether appellant had met any of the requirements of 20 C.F.R. § 10.606(b). The Board considered the evidence and arguments submitted on reconsideration, and for the reasons stated, the Board finds that appellant was not entitled to a merit review of her claim.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 4, 2012 is affirmed.

Issued: May 22, 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