

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

C.R., Appellant)

and)

**FEDERAL JUDICIARY SERVICE, FEDERAL
PUBLIC DEFENDER SERVICE,
Washington, DC, Employer**)

**Docket No. 15-1275
Issued: September 22, 2015**

Appearances:

*Paul S. Blumenthal, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2015 appellant, through counsel, filed a timely appeal from a November 21, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As OWCP issued its last merit decision on July 21, 2014, more than 180 days from 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 his claim.²

ISSUE

The issue is whether OWCP properly denied appellant's request to reopen his case for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new medical evidence with his appeal. The Board, however, has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

This case has previously been before the Board. OWCP accepted that on February 8, 1984 appellant, then a 35-year-old criminal investigator, sustained neck sprain, lumbosacral sprain, and lumbar disc displacement at L5-S1 in a motor vehicle accident. He stopped work on February 8, 1984 and did not return. OWCP paid appellant compensation for total disability until it terminated benefits pursuant to a decision of October 24, 2007, effective November 25, 2007, which an OWCP hearing representative affirmed on March 27, 2008. Appellant appealed OWCP's March 15, 2010 denial of modification to the Board, which assigned Docket No. 10-1273.

By decision dated February 8, 2011, the Board reversed the March 15, 2010 OWCP decision terminating appellant's compensation.³ The Board found that Dr. Robert A. Smith, a Board-certified orthopedic surgeon and impartial medical examiner, did not rely on the statement of accepted facts in reaching his conclusions and thus his opinion was insufficient to resolve the conflict in medical evidence. The facts and circumstances as set forth in the prior decision of the Board are incorporated herein by reference.

Following the Board's decision, OWCP returned appellant to the periodic rolls.

On July 29, 2013 OWCP requested that appellant submit updated medical evidence addressing his employment-related condition.⁴ When it received no response, it referred him back to Dr. Smith for a new second opinion examination.

Based on Dr. Smith's May 9, 2014 report, by decision dated July 21, 2014, OWCP terminated appellant's compensation benefits finding that he had no further disability due to his February 8, 1984 work injury.

On September 4, 2014 appellant, through a checkmark on an appeal request form, requested reconsideration of the July 21, 2014 decision. In a decision dated November 21, 2014, OWCP denied his reconsideration request as he did not submit evidence or raise an argument sufficient to warrant reopening his case for further merit review.

On appeal appellant's counsel contends that he has submitted new medical evidence showing disability and asks that the Board reverse the termination of compensation benefits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or

³ Docket No. 10-1273 (issued February 8, 2011).

⁴ In a decision dated December 5, 2013, OWCP found that appellant received an overpayment of compensation in the amount of \$7,203.00 because he received duplicate compensation payments. It determined that he was at fault in the creation of the overpayment and that it would withhold \$50.00 from his continuing compensation payments to repay the overpayment.

⁵ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides 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."

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.⁶ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁷ 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.⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS

In a decision dated July 21, 2014, OWCP terminated appellant's compensation benefits after finding that the weight of the medical evidence was represented by the second opinion physician, Dr. Smith. Dr. Smith's report established that appellant had no further disability due to his accepted neck sprain, lumbosacral sprain, and lumbar disc displacement at L5-S1. On September 4, 2014 appellant requested reconsideration of the July 21, 2014 termination decision. This request is timely because it was received by OWCP within one year of the July 21, 2014 decision. The question for determination is whether his request meets at least one of the three standards for obtaining merit review.

Appellant's September 4, 2014 reconsideration request consisted only of a mark on an appeal request form indicating that he wanted reconsideration. He did not offer any argument or submit any evidence in support of his request. Appellant suggested no reason for OWCP to reconsider the termination of his compensation. Such a bare request is insufficient to warrant a reopening of his case.¹¹

Appellant's reconsideration request 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 provide relevant and pertinent new evidence not previously considered by OWCP. Because his reconsideration request did not meet any of the standards for reopening his case, the Board finds that OWCP properly denied his request for further merit review under section 8128.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹⁰ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *See L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

On appeal appellant's counsel argues that the Board should reverse OWCP termination, which was a merit decision. As discussed, the Board only has jurisdiction over OWCP's November 21, 2014 nonmerit decision, which denied appellant's request for a merit review. The Board is precluded from reviewing the merits of his case. Counsel submitted new medical evidence with the appeal. However, as noted, the Board has no jurisdiction to review evidence that was not before OWCP at the time it issued its decision.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen his case for further merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2015
Washington, DC

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

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

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

¹² See 20 C.F.R. § 501.2(c)(1).