

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

A.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Waco, TX, Employer)

Docket No. 16-0946
Issued: August 3, 2016

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2016 appellant filed a timely appeal from October 28, 2015 and March 17, 2016 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from April 24, 2015, the date of the most recent OWCP merit decision, to the filing of the current 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 appellant's claim.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 27, 2015 appellant than a 67-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2013 he lifted a five-gallon bucket of paint, weighing 50 pounds, from a four-foot high shelf with both arms. He indicated that, when he turned, the weight of the paint twisted his upper body, he heard a pop in the neck, and he felt a sharp tingling sensation in his neck and down to his shoulders and back. Appellant noted that he suffered a cervical, back, and bilateral shoulder strain with spasm.

By letter dated February 12, 2015, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a September 5, 2013 report, Dr. William Arlington White, a Board-certified neurosurgeon, noted that appellant was seen in 2009 due to complaints of a burning sensation in his right armpit and some mild neck discomfort. He advised that appellant had cervical spondylosis, but he did not believe there was spinal cord compression of any significance as there was no myelopathy and spasticity and no signal changes in his cord or in his magnetic resonance imaging (MRI) scan study. Dr. White indicated that appellant was working as a painter for the employing establishment. He explained that appellant had tried to remove a five-gallon container of paint, weighing 50 pounds, and it “really twisted and turned his neck.” Dr. White noted that appellant had an unusual tingling sensation in the shoulder afterwards. He related that a cervical spine MRI scan was performed and revealed a “very slight signal change in the cord at C3-4. Dr. White has spondylotic ridges at C4-5, C5-6, C6-7.” He also noted a narrowed spinal canal. Dr. White diagnosed cervical spondylosis with spinal stenosis and indicated that surgical compression was a treatment option. He advised that appellant could continue as a painter. A copy of the 2009 report and August 16, 2013 MRI scan accompanied his report.

In a January 22, 2014 report, Dr. Charles J. Wright, a Board-certified neurosurgeon, noted that appellant had pain in his neck since “at least 1998.” He noted that, while at work, appellant was struck in the head by a tail gate of a truck that had broken loose. Dr. Wright noted appellant’s history of injury and treatment and examined appellant. He opined that appellant’s symptoms sound “almost exclusively related to myofascial and arthritic changes in the neck.” Dr. Wright recommended physical therapy and advised against surgery.

By decision dated April 24, 2015, OWCP denied appellant’s claim. It found that he had not established causal relationship as the medical evidence was insufficient to establish that the medical condition was causally related to established work-related events.

On July 20, 2015 OWCP received a June 16, 2015 reconsideration request on an appeal request form. No evidence was submitted with the request.

In an October 28, 2015 decision, OWCP denied appellant’s request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

On December 16, 2015 appellant requested reconsideration on an appeal request form. The request was received by OWCP on December 21, 2015. No evidence was submitted with the request.

In a decision dated March 17, 2016, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

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

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) 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

The Board finds that OWCP properly refused to reopen appellant's claim for consideration of the merits.

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or submitted relevant and pertinent new evidence not previously considered. He disagreed with the denial of his claim of a traumatic injury by decision of August 9, 2013 and requested reconsideration in requests received on July 20 and December 21, 2015. However, appellant failed to make any arguments, or provide any evidence in support of his requests. He therefore 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 pertinent new and relevant evidence

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608(b).

not previously considered. As he did not meet any of the necessary regulatory requirements, the Board finds that appellant is not entitled to further merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2016 and October 28, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 3, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board