United States Department of Labor
Employees' Compensation Appeals Board

V.R., Appellant	)	
	)	**Docket No. 16-0969**
and	)	**Issued: August 8, 2016**
	)	
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Philadelphia, PA, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 6, 2016 appellant, through counsel, filed a timely appeal from an October 13, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP dated June 11, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On October 22, 1998 appellant, then a 43-year-old deputy marshal, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 1998 he twisted his left ankle and sustained a cut on his penis when he jumped a fence in pursuit of a fugitive.[3] He stopped work on the filing date of his claim. The employing establishment indicated that appellant would return to light duty on October 27, 1998. The record does not indicate that OWCP developed the claim at that time.

In a September 25, 2013 medical report, Dr. Nicholas Diamond, an osteopath and pain management specialist, examined appellant, reviewed his medical history, and diagnosed chronic post-traumatic lumbosacral strain and sprain, herniated nucleus pulposus at L4-L5 and L5-Sl, disc bulges at L2-L3 and L3-L4, bilateral lumbar radiculitis, status post interventional pain management with lumbar epidural blocks, facet joint injections and sacroiliac joint injection, post-traumatic lateral and medial meniscus tears to the right knee, degenerative joint disease of the right knee, status post arthroscopic surgery to the right knee with partial medial meniscectomy, partial lateral meniscectomy, and patellar chondroplasty on May 3, 2012, right hand contusion and strain, distal right biceps strain, and left ankle strain and sprain. He determined that he had 13 percent permanent impairment of the right lower extremity and 1 percent permanent impairment each of the right upper extremity and left lower extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). Dr. Diamond concluded that appellant had reached maximum medical improvement on the date of his examination.

On May 1, 2014 appellant filed a claim (Form CA-7) for a schedule award.

In a May 8, 2014 letter, OWCP noted that when appellant's claim was received, it appeared to be a minor injury, which had resulted in minimal lost time from work, and payment of a limited amount of medical expenses. For this reason the claim was administratively approved. However, the merits of the claim had not been formally considered and it reopened the claim for consideration because appellant filed a claim for a schedule award. OWCP informed him that the evidence of record was insufficient to support the merits of his claim. Appellant was advised of the medical evidence needed and was directed to submit such evidence within 30 days. OWCP also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

Appellant did not respond within the allotted time.

[3] By letter dated March 11, 2013, appellant advised OWCP that he had retired from the employing establishment. He also provided his new mailing address.

In a June 11, 2014 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted October 21, 1998 employment incident. It found that he had not submitted any medical evidence contemporaneous to the date of injury or regarding the treatment of his ankle from the date of injury until the present.

By letter dated May 5, 2015, appellant's counsel requested reconsideration. He noted that the case had been originally approved for a left ankle sprain and a cut to the groin area. Counsel contended, however, that the June 11, 2014 decision had rejected the case because of an application for a schedule award. He asserted that Dr. Diamond's September 25, 2013 report was sufficient to justify a schedule award for one percent impairment due to appellant's left ankle sprain. Counsel did not submit any additional evidence.

In a July 24, 2015 decision, OWCP denied further merit review of appellant's claim. It found that Dr. Diamond's report did not contain a rationalized medical opinion explaining the causal relationship between a medical condition and the accepted October 21, 1998 work incident. The decision was mailed to appellant's address of record.

By decision dated October 13, 2015, OWCP reissued the July 24, 2015 decision.[4]

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[5] Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).[6] This section provides that the application for reconsideration must be submitted in writing and 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 not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[7] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[8]

[4] The July 24, 2015 OWCP decision had been returned as being nondeliverable and unable to forward.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.608(a).

[7] *Id.* at § 10.606(b)(3).

[8] *Id.* at § 10.608(b).

ANALYSIS

On May 5, 2015 appellant requested reconsideration of the June 11, 2014 decision that denied his traumatic injury claim. The underlying issue on reconsideration is medical in nature, whether appellant had a medical condition causally related to the accepted October 21, 1998 employment incident.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously considered. In a May 5, 2015 request for reconsideration, appellant contended that the June 11, 2014 OWCP decision had improperly rejected its approval of appellant's claim for a left ankle sprain and a cut to the groin area because he had filed a schedule award claim. However, OWCP never accepted appellant's claim for these conditions. It only administratively approved the payment of a limited amount of medical expenses for what it thought was a minor injury without considering the merits of his claim. The Board notes that a schedule award can be paid only for a condition accepted by OWCP as being related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[9]

Appellant further contended that Dr. Diamond's September 25, 2013 report was sufficient to establish a schedule award for one percent impairment due to his left ankle sprain. As noted, the Board does not have jurisdiction over the merits of the case. Dr. Diamond's report was previously reviewed by OWCP and found deficient on the issue of causal relationship.[10] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[11] Moreover, appellant's lay opinion is of no probative value as lay individuals are not competent to render a medical opinion.[12]

The Board finds, therefore, that appellant's arguments do not establish legal error on a specific point of law or advance a relevant legal argument not previously considered. Furthermore, appellant also did not submit any relevant or pertinent new evidence not previously considered.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

[9] *Veronica Williams*, 56 ECAB 367 (2005).

[10] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[11] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[12] *See R.B.*, Docket No. 15-1143 (issued January 27, 2016).

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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