

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

C.L., Appellant)	
)	
and)	Docket No. 16-0214
)	Issued: March 11, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Gastonia, NC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2015 appellant filed a timely appeal from an October 26, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from December 8, 2014, the date of the most recent merit decision of OWCP, to 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 appellant's claim.

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 7, 2014 appellant, then a 44-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed congestive heart failure as a

¹ 5 U.S.C. § 8101 *et seq.*

result of stress in the course of his federal employment. He first became aware of his condition and of its relationship to his federal employment on October 1, 2014.

The employing establishment controverted appellant's claim on October 15, 2014. It noted that he had not submitted rationalized medical evidence causally linking his medical condition to duties of his federal employment.

On October 20, 2014 OWCP advised appellant of the evidence needed to establish his claim. It afforded him 30 days to submit additional evidence. On the same date, OWCP also requested information from the employing establishment with regard to appellant's claimed injury.

Appellant submitted several unsigned diagnostic reports dated October 2, 2014.

In an operative report dated October 2, 2014, Dr. Justin Haynie, a Board-certified internist, stated that on that date, appellant underwent heart surgery.

In a discharge summary dated October 5, 2014, Dr. Prashanth J. Kamath, a Board-certified internist, diagnosed appellant with combined systolic/diastolic nonischemic congestive heart failure of unknown etiology, but potentially secondary to a viral cause; hypertension; hyperlipidemia; obesity; and possible sleep apnea. Appellant also submitted a report from a physician assistant dated October 5, 2014.

In an undated statement received on December 1, 2014, appellant stated that during the week of September 12, 2014, he was required to work late on several occasions, and that thereafter, he had to arrive more than one hour before his scheduled arrival time. He noted that his work was physical in nature. On September 15, 2014 appellant noted that he had worked nearly 10 hours without lunch and purchased a ham and cheese sandwich for his evening meal. The next day, he awoke early due to stomach cramps and diarrhea. Appellant stated that these symptoms caused dehydration and a flare-up of gout. He returned to work on September 29, 2014. That night appellant awoke at 3:00 a.m. feeling short of breath and weak. The next day, he also felt short of breath and weak. Appellant went to the hospital, where he was observed with bigeminy. He stayed overnight at the hospital and was released with an external defibrillator and heart monitor. Appellant noted that he was currently on leave until his next appointment on January 22, 2015.

By decision dated December 8, 2014, OWCP denied appellant's claim. It found that he had not submitted sufficient medical evidence to establish causal relationship between his condition and duties of his federal employment. OWCP noted that appellant had several nonwork-related factors that predisposed him to heart disease.

On October 7, 2015 appellant requested reconsideration of OWCP's December 8, 2014 decision. With his request, he submitted a mid-year evaluation from a supervisor and time sheets.

In a report dated September 1, 2015, Dr. Alan Thomley, a Board-certified internist, diagnosed combined systolic/diastolic nonischemic, premature ventricular contraction-induced congestive heart failure. He noted that appellant was stable from a cardiac standpoint. At that time Dr. Thomley stated that appellant remained disabled.

By decision dated October 26, 2015, OWCP denied appellant's request for reconsideration without reviewing the merits of his case. It noted that he had not submitted relevant new evidence sufficient to require reconsideration of his claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or 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.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

OWCP issued a December 8, 2014 decision finding that appellant had not established a heart condition related to factors of his federal employment. On October 7, 2015 appellant requested reconsideration of this decision. With his request, he submitted a mid-year performance evaluation, time sheets, and a September 1, 2015 report from Dr. Thomley.

As noted above, the Board does not have jurisdiction over the merits of the December 8, 2014 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of his claim. In his October 7, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. He merely listed the documents he was submitting on reconsideration. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant met his burden of proof to establish an occupational disease, and specifically whether he had submitted sufficient medical evidence to establish a causal relationship between his congestive heart failure and duties of his federal employment. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any such evidence in this case. With his request, appellant submitted a mid-year performance evaluation and time sheets. These documents, while not previously considered by OWCP, are irrelevant to the underlying issue of his burden of proof to provide rationalized medical evidence addressing the cause of his condition. As such, they are insufficient to warrant reconsideration of appellant's claim.

Appellant submitted a medical report from Dr. Thomley dated September 1, 2015. This report, not previously considered by OWCP, was also irrelevant to the underlying issue of causal relationship, because it does not contain an opinion on the causal relationship between duties of

² 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

³ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

appellant's federal employment and his congestive heart failure. Dr. Thomley did not offer an opinion as to the cause of appellant's heart failure other than to say that it was "premature ventricular contraction-induced," which is a biomechanical description of what occurred to his heart, not an opinion on what outside factors may have caused the condition. As such, this report, while not previously considered, was irrelevant to the basis upon which OWCP denied appellant's claim on December 8, 2014.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 new evidence not previously considered. 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 review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2015 is affirmed.

Issued: March 11, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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