

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, PRAIRIE VILLAGE
BRANCH, Shawnee, KS, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-1233
Issued: November 23, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 25, 2016 appellant filed a timely appeal from an April 4, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the issuance of the last merit decision on May 28, 2015 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 the case.

ISSUE

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

On appeal appellant contends that his physician did not provide a description of his work activities because his work duties were already described in the statement of accepted facts (SOAF).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 1, 2014 appellant, then a 44-year-old carrier technician, filed an occupational disease claim (Form CA-2), alleging that he developed tendinitis as a result of his federal employment duties. He did not provide a description of any specific employment duties. Appellant did not stop work.

By letter dated January 20, 2015, OWCP informed appellant that further information was necessary to support his claim, and afforded him 30 days to submit the necessary evidence.

In response, appellant submitted an October 23, 2014 progress note from Dr. Jeffrey M. Kaplan, a neurologist, noting that he had treated appellant for carpal tunnel syndrome. Dr. Kaplan concluded that appellant's carpal tunnel syndrome was directly related to his work for the employing establishment.

Appellant also submitted his response to OWCP's questionnaire. He explained that the factors of his employment which contributed to his carpal tunnel syndrome included locking, unlocking, and starting his vehicle multiple times every day, placing mail in slots, scanning parcels, entering tracing numbers, lifting heavy trays, pushing and maneuvering hampers weighing over 100 pounds, and gripping mail.

By letter dated March 30, 2015, OWCP asked Dr. Kaplan to review a SOAF which described appellant's duties, and asked him whether appellant's work factors caused, aggravated, or accelerated his carpal tunnel syndrome. In a response dated April 7, 2015, Dr. Kaplan checked a box marked "yes" indicating a causal relationship.

By decision dated May 28, 2015, OWCP denied appellant's claim, finding that the medical evidence of record did not establish that the claimed medical condition was causally related to the accepted factors of employment. The decision noted that appellant's physician had not explained how appellant's work factors caused or contributed to his diagnosed condition based on an accurate factual and medical background.

On January 6, 2016 appellant requested reconsideration. In support of his request for reconsideration, he submitted a letter dated October 12, 2015 in which he alleged that his doctor signed a form that established causal relationship between the accepted factors of his federal employment and his injury. Appellant also submitted a June 11, 2015 letter wherein Dr. Kaplan indicated that he was unsure why OWCP did not receive his response to its letter, and reiterated his belief that appellant's carpal tunnel was directly related to his work at the employing establishment.

By decision dated April 4, 2016, OWCP denied reconsideration as it found that the evidence was insufficient to warrant review of the May 28, 2015 decision which denied appellant's claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ 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.⁴ 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.⁵

ANALYSIS

OWCP found that appellant had established that he experienced the employment factors as alleged. Appellant also submitted medical evidence of a diagnosis of carpal tunnel syndrome. However, OWCP denied his claim as he had not submitted rationalized medical evidence establishing a causal relationship between his carpal tunnel syndrome and the accepted duties of his federal employment. In the merit decision of May 28, 2015, it explained that appellant's physician did not explain how appellant's employment activities caused his medical condition.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

The underlying issue in this case is whether appellant submitted rationalized medical evidence supporting causal relationship between his alleged employment duties and his diagnosed condition. In his request for reconsideration, appellant argued that Dr. Kaplan had signed a form establishing causal relationship. His argument did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument which had not been considered by OWCP. OWCP had previously considered Dr. Kaplan's medical opinion regarding causal relationship and found that it lacked sufficient medical rationale in support of a causation finding.

The only new evidence submitted by appellant with his reconsideration request was the June 11, 2015 letter from Dr. Kaplan. Dr. Kaplan again repeated his unrationalized opinion regarding causal relationship. This opinion was not relevant and pertinent new evidence. Rather, it was repetitive of his October 23, 2014 progress note and his April 7, 2015 form response. The Board has found that evidence which is repetitive, duplicative, or cumulative in

² *Id.* Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

nature is insufficient to warrant reopening a claim for merit review.⁶ Accordingly, this report is not sufficient to warrant further merit review.

The Board finds that OWCP properly denied appellant's request for further merit review.⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 4, 2016 is affirmed.

Issued: November 23, 2016
Washington, DC

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

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

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

⁶ *J.B.*, Docket No. 14-1164 (issued November 20, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

⁷ *See L.H.*, 59 ECAB 253 (2007).