

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

B.G., Appellant)	
)	
and)	Docket No. 16-1377
)	Issued: November 22, 2016
DEPARTMENT OF HOMELAND SECURITY,)	
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Manchester, NH, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 21, 2016 appellant filed a timely appeal from a December 30, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of OWCP dated April 14, 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 this case.

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).

On appeal appellant contends that he sustained a work-related injury on November 26, 2013 for which he is entitled to the cost incurred for his initial hospital evaluation related to this injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 24, 2014 appellant, then a 42-year-old deportation officer, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2013 he experienced right hand trauma and swelling in an attempt to apprehend a noncompliant subject.

In a November 26, 2013 right hand x-ray report, Dr. John J. Januario, a Board-certified radiologist, provided an impression of no fracture. There appeared to be mild flexion deformity at the fifth distal interphalangeal joint, age indeterminate.

In an emergency room medical report dated November 26, 2013, Dr. Kevin B. Rankins, Board-certified in emergency medicine, provided a history that appellant presented with right hand swelling. He was stung by a bee that morning and had some mild swelling of his hand. Appellant also injured his right hand while trying to restrain a criminal earlier that evening. Dr. Rankins provided a history of appellant's medical, family, and social background. He reported findings on physical and x-ray examination. Dr. Rankins provided an impression of hand swelling (primary encounter diagnosis) and hand injury. He related that it was difficult to determine whether this was traumatic or allergic. Dr. Rankin noted that there was no fracture on x-ray. In a November 27, 2013 New Hampshire workers' compensation medical form, he reiterated appellant's history of injury and diagnoses. Dr. Rankins released him to return to full-duty work on the date of his examination. He advised that appellant had not reached maximum medical improvement. Dr. Rankins noted that it was undetermined as to whether his injury had caused permanent impairment.

In a February 25, 2014 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In a March 6, 2014 narrative statement, appellant related that he filed his first Form CA-1 on November 27, 2013, within one day of his claimed November 26, 2013 work injury. He noted that this form was subsequently returned to him because the employing establishment's signature was missing. The employing establishment filed another Form CA-1 on appellant's behalf on January 24, 2014. Appellant related that he had not sustained any other injury between the date of injury and the date it was first reported. Prior to his claimed November 26, 2013 injury, his hand was irritated by a bee sting on November 25, 2013. This incident caused appellant's hand to swell slightly. On November 27, 2014 he experienced extreme swelling of his hand for which he sought medical treatment. Appellant noted that no broken bones were found.

Appellant resubmitted Dr. Rankins' November 27, 2013 state workers' compensation medical form. He also submitted a copy of his November 27, 2013 Form CA-1.

In a March 27, 2014 decision, OWCP accepted that the November 26, 2013 incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment incident.

On March 17, 2015 appellant requested reconsideration. He resubmitted Dr. Januario's November 26, 2013 right hand x-ray report and Dr. Rankins' November 27, 2013 state workers' compensation medical form.

In an April 14, 2015 decision, OWCP denied modification of the March 27, 2014 decision. It found that the evidence submitted repeated or duplicated evidence already of record. OWCP further found that Dr. Rankins' report did not provide a specific medical diagnosis causally related to the accepted November 26, 2013 employment incident.

In a July 30, 2015 appeal request form, appellant requested reconsideration. In an accompanying memorandum of the same date, he contended that he sustained a work-related right hand injury on November 26, 2013 for which he was entitled to the cost incurred for services associated with his initial hospital visit on the date of injury.

By decision dated December 30, 2015, OWCP denied further merit review of appellant's claim. It found that he had not submitted any evidence to support that it erroneously applied or interpreted a point of law. Specifically, OWCP found that appellant failed to address the issue at hand. It further found that he had not submitted any relevant or pertinent new medical evidence not previously considered which contained a firm diagnosis of a specific injury.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that 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 also must file his or her application for review within one year of the date of that decision.⁴ Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

Appellant disagreed with OWCP's denial of his traumatic injury claim. He requested reconsideration contending that his right hand condition was causally related to the accepted November 26, 2013 employment incident and he was entitled to medical benefits.

The Board finds that appellant failed to show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered. In his July 30, 2015 request for reconsideration and on appeal appellant asserted that he sustained a work-related right hand injury on November 26, 2013 for which he was entitled to the cost incurred for services associated with his initial hospital

² *Id.* Under section 8128 of FECA, the 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); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

visit on the date of injury. The Board finds that these contentions do not show a legal error by OWCP or constitute new and relevant legal argument.

The underlying issue in this case is whether appellant submitted medical evidence establishing that his right hand condition is causally related the accepted November 26, 2013 employment incident. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.⁶ However, appellant did not submit any new medical evidence with his request for reconsideration showing an employment-related right hand injury.

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).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2016
Washington, DC

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

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

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

⁶ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).