

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

I.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
NORTH FLORIDA/SOUTH GEORGIA
VETERANS HEALTH SYSTEM, Lake City, FL,
Employer**

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**Docket No. 16-1380
Issued: November 22, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 20, 2016 appellant filed a timely appeal from a May 11, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP dated November 27, 2015, to the filing of the 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.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the May 11, 2016 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that OWCP's November 27, 2015 decision was issued in error because he received the decision before documents were mailed to or received by OWCP. He noted that the employing establishment did not mail the documents to OWCP until after the 30-day time limitation.

FACTUAL HISTORY

On October 13, 2015 appellant, then a 59-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2015 he sustained a contusion/bruise on his left knee when he hyperextended the knee while moving a patient from an emergency medical service stretcher to an emergency department stretcher with minimal paramedic assistance. He stopped work on September 28, 2015.

Appellant submitted medical records dated June 26, August 21, and September 21, 2015 from the employing establishment's health unit. In an August 21, 2015 progress note, Dr. Robert B. Fulton, a Board-certified in emergency medicine physician, noted appellant's complaint of left lateral knee pain which began four weeks earlier. Appellant reported to Dr. Fulton that he may have strained his knee while moving a patient. Dr. Fulton provided findings on physical and x-ray examination of the left knee, and a list of appellant's medications and immunizations. He assessed probable mild tendinitis of the left knee. In a September 21, 2015 progress note, Dr. Kaleeswari Aruleselvam, a family practitioner, noted appellant's complaint of left knee pain, reviewed appellant's medical records and laboratory test results, and provided a history that appellant tried to go across a stretcher and felt a pull. He reported findings on examination and assessed chronic pain.

An employing establishment incident report dated October 13, 2015 indicated that appellant was involved in an incident on June 26, 2015 while lifting/repositioning patients.

In an October 23, 2015 letter, OWCP informed appellant of the deficiencies in his claim and afforded him 30 days to submit additional medical evidence, including a detailed narrative report from his physician which included a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated a left knee condition.

In an October 15, 2015 letter, received by OWCP on November 24, 2015, the employing establishment controverted appellant's claim.

By decision dated November 27, 2015, OWCP accepted that the June 26, 2015 incident occurred as alleged. However, it denied appellant's claim as appellant had failed to provide a rationalized medical opinion establishing that his diagnosed medical conditions were causally related to the accepted employment incident. There was no response to the October 23, 2015 development letter within the 30-day period.

On May 4, 2016 appellant requested reconsideration. He did not submit additional evidence or argument.

In a May 11, 2016 decision, OWCP denied further merit review of appellant's claim. It found that his request for reconsideration neither raised substantive legal questions nor included relevant and pertinent new evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of the FECA,³ OWCP's regulation 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.⁴ 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.⁵ Section 10.608(b) of the implementing regulation states 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.⁶

ANALYSIS

Appellant disagreed with OWCP's denial of his traumatic injury claim for a left knee injury causally related to the accepted June 26, 2015 employment incident. On May 4, 2016 he requested reconsideration.

The Board finds that 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 provide relevant and pertinent new evidence not previously considered by OWCP.

Appellant's May 4, 2016 reconsideration request consisted only of a checkmark on an appeal request form indicating that he wanted reconsideration. He did not offer any argument or submit any evidence in support of his request. Appellant suggested no reason for OWCP to reconsider the denial of his traumatic injury claim. Such a bare request is insufficient to warrant a reopening of his case.⁷

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.

On appeal appellant contends that OWCP's November 27, 2015 decision was issued before documents being mailed to OWCP were received. As previously noted, the Board does not have jurisdiction over the merits of the claim. The only issue on appeal is whether OWCP properly denied appellant's request for further merit review of his claim.

³ *Supra* note 1. 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).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ *See L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

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 May 11, 2016 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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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