

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

P.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Youngstown, OH, Employer**

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**Docket No. 16-1145
Issued: October 27, 2016**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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 May 10, 2016 appellant, through counsel, filed a timely appeal from an April 25, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of March 19, 2015 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

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 reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 7, 2015 appellant, then a 58-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging a left heel spur from standing and walking while performing her employment duties. She related that she worked on her feet for 8 to 10 hours a day. Appellant stopped work on June 23, 2012 and has not returned. She retired on January 7, 2015. Included with the claim form was a controversion letter from the employing establishment.

In a January 26, 2015 letter, OWCP advised appellant of the deficiencies in her claim and requested that she submit additional factual and medical evidence, including a rationalized report from her physician, which explained how the alleged employment factors caused or contributed to the diagnosed condition. Appellant was afforded 30 days to submit the requested information.

By letter dated February 24, 2015, appellant requested a 15-day extension to submit the requested information. On February 26, 2015 OWCP granted appellant an additional 15-day extension to submit the additional documentation.

Appellant submitted a March 5, 2015 narrative statement; a signature page from the original mailed questionnaire, signed and dated March 5, 2015; an August 21, 2014 ankle x-ray report; and a June 25, 2012 statement of accepted facts for OWCP file number xxxxxx895.³ OWCP also received treatment notes dated August 28, September 16, and November 5, 2014 signed by Dr. Larry Karlock, a podiatrist, which related diagnoses of plantar fasciitis, bursitis, and calcaneal heel spur syndrome supported by examination findings.

By decision dated March 19, 2015, OWCP denied the claim as causal relationship had not been established. It found that Dr. Karlock failed to provide a rationalized medical opinion which identified any specific job duties or factors claimed and which explained how appellant's employment resulted in the diagnosed condition(s).

On March 17, 2016 OWCP received appellant's March 17, 2016 request for reconsideration. In a March 13, 2016 letter, appellant indicated that she was requesting reconsideration in OWCP file number xxxxxx325 as well as the current case and she needed an extension of time to submit evidence. She stated that she felt her job as a clerk on the automation machine was the direct cause of the aggravation and pain she experienced in both her knees and legs as well as her heel spurs on both feet.

In a March 31, 2016 letter, OWCP granted appellant 20 days to allow for submission of any additional documentation. No additional evidence was received.

³ The record indicates that appellant has filed seven other OWCP claims dating from August 11, 1999. OWCP file number xxxxx895 pertains to a claim for traumatic injury on June 23, 2012.

By decision dated April 25, 2016, OWCP denied appellant's request for reconsideration. It found that appellant's letter 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 FECA,⁴ 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be reviewed within one year of the date of that decision.⁶ 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.⁷

ANALYSIS

The most recent decision on the merits of appellant's claim was OWCP's March 19, 2015 decision denying modification of its prior decision. As more than 180 days elapsed from the March 19, 2015 decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. The underlying issue in this case is whether appellant has submitted sufficient evidence relevant to the issue of causal relationship of her alleged heel spur conditions. This is a medical issue.

Appellant offered no relevant legal argument which had not previously been considered by OWCP nor did she provide relevant and pertinent new evidence not previously considered.

The Board also finds that appellant failed to show that OWCP had erroneously applied or interpreted a specific point of law. Because she failed to meet one of the standards enumerated under 20 C.F.R. § 10.606 (b)(3), appellant was not entitled to further merit review of her claim.⁸

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ See *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (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).

On appeal, counsel alleges that OWCP's decision is contrary to fact and law. He does not, however, provide any evidence to demonstrate that OWCP erroneously denied appellant's request for reconsideration. OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 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