

ISSUE

The issue is whether OWCP properly denied appellant's reconsideration request under 5 U.S.C. § 8128(a).

On appeal, appellant contends that all the evidence submitted in the record of evidence, to establish her children as disabled, has not been reviewed.

FACTUAL HISTORY

On January 27, 2003 appellant, through former counsel, filed a survivor's claim (Form CA-5) seeking compensation for her husband's, the former employee's, November 16, 2000 death.⁴ Counsel indicated that the nature of injury which caused the employee's death was malignant mesothelioma. A death certificate listed the immediate cause of death as malignant mesothelioma due to occupational asbestos exposure.

On November 17, 2003 OWCP accepted that the employee died due to mesothelioma while in the performance of duty. Appellant elected to receive FECA benefits effective November 17, 2000 in lieu of benefits from the Office of Personnel Management.

In an October 1, 2011 letter, appellant requested augmented compensation benefits for her disabled adult son and daughter, both of whom were incapable of self-support. She noted that both children received Social Security Administration (SSA) disability benefits due to their mental disabilities.

By letter dated January 17, 2012, OWCP requested additional information from appellant to determine whether her children were eligible for compensation beyond their 18th birthday. It advised that compensation could continue to be paid on behalf of an unmarried child age 18 or older who was either a full-time student or incapable of self-support. OWCP requested a medical report from a physician fully describing the mental or physical disability which caused the incapacity for self-support, when the disability began, and an estimate of its probable duration.

Appellant submitted evidence which addressed her son's and daughter's paranoid schizophrenia, learning disability, medical treatment, and disability. By letter dated June 25, 2014, the VA addressed the daughter's monthly benefits due to her permanent incapacity for self-support.

In an October 4, 2004 letter, Dr. Jennifer Heitkamp, a psychiatrist, indicated that she had treated appellant's daughter since February 2, 2001. She noted, however, that the daughter had been in treatment on and off since approximately age nine for her lifelong and chronic schizophrenia.

⁴ The record indicates that the employee alleged exposure to asbestos during his military service and federal employment. He worked as a pipefitter at the employing establishment from 1992 until his voluntary retirement on September 2, 1994.

In a June 30, 2015 decision, OWCP denied appellant's claim for augmented compensation. It found that the medical evidence of record failed to establish that her son and daughter were incapable of self-support at the time of the employee's death to the present time.

On April 28, 2016 appellant requested reconsideration. She contended that her daughter was entitled to compensation benefits because she received SSA disability benefits and Department of Veterans Affairs (VA) benefits due to her schizophrenia. Appellant related that the VA benefits were for being a "helpless child."

In a May 9, 2016 decision, OWCP denied further merit review of appellant's claim. It found that the evidence of record was irrelevant or immaterial and failed to advance a relevant legal argument not previously considered or demonstrate legal error by OWCP.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁵ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if it determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

Appellant disagreed with OWCP's denial of her claim for augmented compensation for her disabled, adult son and daughter. She requested reconsideration and asserted that her children were incapable of self-support.

The Board finds that appellant did not 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 her April 14, 2016 request for reconsideration, she asserted that her daughter was entitled to augmented compensation because she had schizophrenia for which she received SSA and VA disability benefits. Appellant maintained that

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Id.* at § 10.606(b)(3).

⁸ *Id.* at § 10.608(b).

she received the VA benefits because she was a “helpless child.” The Board finds that these assertions do not show a legal error by OWCP or constitute a new and relevant legal argument.⁹

The underlying issue in this case is whether appellant submitted sufficient medical evidence establishing that her adult son and daughter were incapable of self-support due to mental or physical disability at the time of the employee’s death.¹⁰ This is a medical issue which must be addressed by relevant new medical evidence.¹¹ However, appellant did not submit any relevant and pertinent new medical evidence with her request for reconsideration showing a mental or physical disability which caused her disabled children’s incapacity for self-support.

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.¹²

On appeal, appellant contends that all the evidence submitted in the record, to establish her children as disabled, has not been reviewed. As noted above, the Board lacks jurisdiction to review the merits of this case. The only issue on appeal is whether OWCP properly denied appellant’s request for further merit review of her claim.

CONCLUSION

The Board finds that OWCP properly denied appellant’s reconsideration request under 5 U.S.C. § 8128(a).

⁹ See *H.S.*, 58 ECAB 554 (2007) (the determination of an employee’s rights or remedies under other statutory authority does not establish entitlement to benefits under FECA).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation to Children*, Chapter 2.700.8(c) (July 2000).

¹¹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹² See *L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2017
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