

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

E.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 16-1744
Issued: February 16, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 31, 2016 appellant, through counsel, filed a timely appeal from an August 16, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The last merit decision was the May 14, 2014 decision of the Board, which became final after 30 days of issuance² and is not subject to further review.³ Pursuant to the Federal Employees' Compensation Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 20 C.F.R. § 501.7(a); *see R.M.*, Docket No. 14-1213 (issued October 15, 2014).

³ *Id.* at § 501.6(d); *see R.M.*, *id.*

⁴ 5 U.S.C. §§ 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

On appeal appellant, through counsel, contends that the decision is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before the Board.⁵ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts follow.

On April 9, 2009 appellant, then a 39-year-old mail handler, filed an occupational disease claim (Form CA-2) attributing his bilateral carpal tunnel syndrome and decreased muscle strength in his hands to repetitive employment tasks he performed while sorting mail. OWCP denied the claim, finding that appellant had not established that the claimed medical conditions were causally related to the established employment factors.⁶

In the most recent appeal, the Board, in a February 12, 2015 decision, affirmed OWCP's September 9, 2014 decision denying reconsideration. The Board noted that the December 3, 2012 report of Dr. John Ellis, a physician Board-certified in family practice, had been previously considered and did not constitute relevant and pertinent new evidence.⁷

By letter received by OWCP on January 27, 2016, appellant, through counsel, requested reconsideration. In support of his reconsideration request, he resubmitted a copy of the December 3, 2012 report from Dr. Ellis, which counsel alleged had not been previously considered.

By letter dated May 18, 2016, counsel informed OWCP that a request for reconsideration had been sent *via* certified mail on January 21, 2016. He requested that a decision be issued.

By decision dated August 16, 2016, OWCP denied appellant's request for reconsideration without conducting a merit review. It noted that the December 3, 2012 medical report from Dr. Ellis was duplicative of a report received by OWCP on January 10, 2013 and again on March 5, 2013. OWCP also noted that the Board specifically addressed the December 3, 2012 medical report in its February 12, 2015 decision.

⁵ Docket No. 10-728 (issued November 3, 2010); Docket No. 14-309 (issued May 14, 2014); Docket No. 15-46 (issued February 12, 2015).

⁶ In a November 3, 2010 decision, the Board found that the case was not in posture for a decision and remanded the case for further development of the evidence. Docket No. 10-728 (issued November 3, 2010). In a May 14, 2014 decision, the Board affirmed OWCP's October 17, 2013 merit decision, and found that appellant had not met his burden of proof to establish that he sustained cubital tunnel syndrome in the performance of duty causally related to factors of his federal employment. Docket No. 14-309 (issued May 14, 2014).

⁷ Docket No. 15-46 (issued February 12, 2015).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ 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.⁹ 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.¹⁰

It is well established that the requirement for reopening a claim for further merit review before OWCP does not require a claimant to submit all evidence necessary to discharge his burden of proof. Rather, the requirement for reopening a case specifies only that the evidence be relevant, pertinent, and not previously considered by OWCP. The presentation of such new evidence creates the necessity for review of the full case record in order to properly determine whether the newly submitted evidence warrants modification of an earlier decision.¹¹

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

Appellant disagreed with OWCP's denial of his occupational injury claim. The underlying issue in this case is whether appellant submitted medical evidence establishing that his cubital tunnel condition was causally related to the accepted factors of his federal employment. That is a medical issue which must be addressed by relevant, new medical evidence.¹²

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously considered. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).¹³

With his request for reconsideration, appellant, through counsel, submitted a December 3, 2012 report by Dr. Ellis. This report has been previously considered by both OWCP and the Board. Accordingly, this resubmitted report does not constitute relevant and pertinent new

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(b).

¹¹ *F.D. (S.D.)*, 58 ECAB 413 (2007).

¹² *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹³ 20 C.F.R. § 10.606(b).

evidence. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴

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 constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).¹⁵

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2016 is affirmed.

Issued: February 16, 2017
Washington, DC

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

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

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

¹⁴ *T.T.*, Docket No. 13-1717 (issued February 26, 2014).

¹⁵ *See L.H.*, 59 ECAB 253 (2007).