

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

T.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Northfield, MN, Employer**

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**Docket No. 19-0427
Issued: July 15, 2019**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2018 appellant filed a timely appeal from a July 23, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed since OWCP's last merit decision, dated January 19, 2018, 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 reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 26, 2017 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that his folliculotropic mycosis-fungoides was aggravated by his

¹ 5 U.S.C. § 8101 *et seq.*

federal employment duties which required that he be outside all day. He explained that his physician ordered that he avoid peak hours of sun from 10:00 a.m. to 3:00 p.m. The employing establishment challenged the claim and alleged that this was a preexisting condition. Appellant did not stop work.

In a May 30, 2017 report, Dr. Jonathan L. Lopez, a Board-certified dermatologist, related that appellant was being followed for a diagnosis of folliculotropic mycosis-fungoides, a mild lymphoma of the skin. He related that this diagnosis could cause severe symptoms of itching, which appellant noted was aggravated by carrying his mailbag. Dr. Lopez noted that it would be beneficial for appellant to avoid carrying a mailbag if at all possible.

In a development letter dated July 26, 2017, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It advised him regarding the evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

In an August 25, 2017 report, Dr. Adam R. Schmitt, a dermatologist, indicated that appellant had been followed for his folliculotropic mycosis-fungoides since August 2014. He noted that the condition is “primarily, skin-directed T-cell lymphoma.” Dr. Schmitt explained that the “origin of [appellant’s] disease is unclear, although [appellant] reports that he was a jet engine mechanic for 22 years with the [Air Force] and may have had daily contact with fuel and oil, both of which are known carcinogens.” He recommended that, since appellant was receiving intensive light treatment, he avoid midday sun as this could cause easy burning and exacerbate his symptoms.

By decision dated January 9, 2018, OWCP denied the claim because the medical evidence submitted was insufficient to establish a causal relationship between the accepted employment factors and his diagnosed condition. It noted that there was no discussion of specific work factors and how they contributed to the diagnosed condition.

On March 21, 2018 appellant requested reconsideration. He argued that he was not claiming that his job caused his disease, but that his disease had been aggravated by his job. Appellant referred to Dr. Schmitt’s August 25, 2017 report and also indicated that Dr. Schmitt provided a new report, dated March 6, 2018, which explained causal relationship. No additional evidence was received.

By decision dated July 23, 2018, OWCP denied appellant’s request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with 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.² One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.³

To require OWCP to reopen a timely request for reconsideration 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 request for reconsideration must be received 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 request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

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

Appellant's timely request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. The underlying issue on appeal was whether his folliculotropic mycosis-fungoides was caused or aggravated by factors of his employment. This is a medical issue which must be determined by rationalized medical evidence.⁸ Appellant argued that the August 25, 2017 report of Dr. Schmitt supported his claim. However, this report was previously considered by OWCP and the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.⁹ Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

² *Id.* at § 8128(a).

³ 20 C.F.R. § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System. Chapter 2.1602.4b.

⁴ *Supra* note 1.

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *See J.B., id.*; *see L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Candace A. Karkoff*, 56 ECAB 622 (2005).

Furthermore, appellant did not submit relevant or pertinent new evidence in support of his request for reconsideration.¹⁰ While he referred to a new report of Dr. Schmitt dated March 6, 2018, he did not provide a copy of the report. Thus, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).¹¹

The Board accordingly finds that appellant has not met 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 reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2019
Washington, DC

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

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

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

¹⁰ S.S., Docket No. 19-0066 (issued May 8, 2019); M.H., Docket No. 13-2051 (issued February 21, 2014).

¹¹ H.H., Docket No. 18-1660 (issued March 14, 2019).