

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

E.G., Appellant)	
)	
and)	Docket No. 18-1446
)	Issued: March 6, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Orlando, FL, Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
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 July 21, 2018 appellant, through counsel, filed a timely appeal from a January 23, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 13, 2017, 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 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 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 pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 14, 2016 appellant, then a 49-year-old transportation security officer (screener), filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral knee condition as a result of his federal employment duties, including constant bending down on the concrete floor and prolonged standing when breaks were stopped for an hour or more. He indicated that he first became aware of his claimed condition on October 6, 2010 and first realized on February 12, 2016 that it was caused or aggravated by his federal employment. Appellant did not stop work.

In a letter dated November 18, 2016, the employing establishment controverted appellant's claim and argued that his bilateral knee injury was not the result of his federal employment, but more likely the result of a preexisting service-related medical condition for which he was being treated by the Department of Veterans Affairs Medical Center.

By decision dated January 13, 2017, OWCP found that fact of injury had been established, but denied the claim because the medical evidence submitted was insufficient to establish causal relationship between appellant's bilateral knee condition and accepted factors of his federal employment.

On January 13, 2018 appellant requested reconsideration of his claim.

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

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely request for reconsideration, including all supporting documents, must set forth arguments

³ This section provides in pertinent part: "[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).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. 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 Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a 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 January 13, 2018 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Appellant requested reconsideration on January 13, 2018. He did not submit an additional statement or argument supporting his request. Consequently, appellant is not entitled to further review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).⁸

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Therefore, OWCP was not required to reopen appellant's claim for reconsideration of the merits in accordance with the third above-noted requirement under section 10.606(b)(3).⁹

As appellant did not meet any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied his request for reconsideration pursuant to 20 C.F.R. § 10.608.

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).

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

⁸ *Supra* note 6.

⁹ *Id.* See also *V.H.*, Docket No. 15-1262 (issued March 18, 2016).

ORDER

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

Issued: March 6, 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