

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

_____)	
A.N., Appellant)	
)	
and)	Docket No. 20-1450
)	Issued: May 11, 2021
NATIONAL AERONAUTICS & SPACE)	
ADMINISTRATION, Washington, DC, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 29, 2020 appellant filed a timely appeal from a March 5, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated February 5, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over 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).

¹ The Board notes that following the March 5, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On July 6, 1999 appellant, then a 48-year-old educational outreach specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained depression causally related to factors of his federal employment. OWCP accepted the claim for major depression. It paid appellant compensation on the periodic rolls, effective March 23, 2001.

By decision dated August 14, 2007, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 15, 2007. It further found that he had not established a consequential injury to his neck and back causally related to his accepted employment injury.

Appellant appealed to the Board. By decision dated April 22, 2008, the Board reversed in part and affirmed in part the August 14, 2007 decision.³ The Board reversed OWCP's termination of appellant's wage-loss compensation and medical benefits and affirmed its denial of expansion of the acceptance of the claim to include consequential injury to his neck and back due to his depression or the accepted employment factors.

Following the Board's decision, OWCP reinstated appellant's wage-loss compensation retroactive to August 2007.

Over the years, OWCP periodically requested that appellant submit completed financial disclosure statements (Form EN1032) which solicited information regarding his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On August 15, 2017 OWCP provided appellant a Form EN1032 and informed him that federal regulations required him to report any improvement in his medical condition, any employment, any change in the status of claimed dependents, any third-party settlement, and any income or change in income from federally-assisted disability or benefit programs. It notified him that he was required to fully answer all questions on the EN1032 form and return it within 30 days or his benefits would be suspended. The form was mailed to appellant's last known address. No response was received.

On October 11, 2017 OWCP provided appellant with another EN1032 form for his completion.

² *Order Granting Remand and Cancelling Oral Argument*, Docket No. 05-1157 (issued February 1, 2006); Docket No. 07-2328 (issued April 22, 2008).

³ *Supra* note 2.

On November 7, 2017 appellant copied part of a completed EN1032 form onto a letter that he mailed to the Secretary of Labor.

On November 20, 2017 OWCP noted that appellant had provided answers to the questions from the EN1032 form in his correspondence to the Secretary of Labor. It advised him that he was required to complete, sign, and return the actual completed EN1032 form rather than a copy. OWCP enclosed another EN1032 form for appellant's completion. It afforded him 30 days to complete and return the form or have his benefits suspended in accordance with 20 C.F.R. § 10.538. Appellant did not respond to OWCP's request within the allotted time.

In a report of telephone call dated February 20, 2018 (Form CA-110), the employing establishment inquired as to why OWCP had not terminated appellant's wage-loss compensation. An OWCP claims examiner responded that appellant had provided the information on the EN1032 form, but not the form itself, and was going to consult with his supervisor about the matter.

By decision dated March 2, 2018, OWCP suspended appellant's wage-loss compensation benefits, effective March 4, 2018, for failing to submit the EN1032 form as requested. It noted that he had not responded to its October 11 and November 20, 2017 letters. OWCP advised that, if appellant completed and returned an enclosed EN1032 form, it would restore his wage-loss compensation benefits retroactive to the date of suspension.

In a March 9, 2018 letter sent to the Secretary of Labor, appellant asserted that he was "writing in opposition to the March 4, 2018, arbitrary and retaliatory suspension of compensation benefits." He related, "It is my request that the decision be reversed and that there be a halt to the adverse actions...." Appellant maintained that he had provided OWCP with the requested answers to the EN1032 form.

On April 12, 2018 OWCP again advised appellant that he should complete, sign, and return an EN032 form in order to have his compensation retroactively reinstated.

On July 3, 2018 appellant again wrote the Secretary of Labor maintaining that he had provided the requested income and employment information. He requested reinstatement of his wage-loss compensation.

In a July 17, 2018 response, OWCP informed appellant that it would reinstate his wage-loss compensation benefits when it had received a completed and signed EN1032 form. On August 29, 2018 it sent him another EN1032 form for his completion.

In an October 9, 2018 letter to the Secretary of Labor, appellant again copied part of the EN1032 form with his answers and signature into the letter. He asserted that, in a February 16, 2018 telephone call, OWCP had told the employing establishment that he had technically responded to the EN1032 form. Appellant requested that his suspension of compensation be reconsidered and reversed or a hearing scheduled. He referenced OWCP's procedures indicating that no special form was required to request reconsideration, a hearing, or an appeal.

In an October 26, 2018 response, OWCP again advised appellant that he had to submit an actual EN1032 form to have his benefits reinstated rather than copying and pasting the answers into another document.

On December 11, 2018 appellant asserted that no special form was necessary for requesting reconsideration. He argued that he had submitted the information requested on the EN1032 form. Appellant again noted that, on February 20, 2018, OWCP had advised the employing establishment that he had technically provided the information sought on the EN1032 form. He asked that OWCP adjudicate his reconsideration request.

On December 21, 2018 OWCP advised appellant that in his March 9, 2018 letter he had not formally requested reconsideration, but instead expressed disagreement with its decision. It noted that he had now indicated that he desired to pursue reconsideration.

By decision dated February 5, 2019, OWCP denied modification of its March 2, 2018 suspension decision. It found that the EN1032 form contained important certifications and had to be completed on the actual form and signed and returned to OWCP before appellant's compensation could be reinstated.

On February 28, 2019 appellant asserted that he had initially requested reconsideration on March 9, 2018 rather than December 11, 2018, and that OWCP had violated its regulations and procedures in failing to timely adjudicate his reconsideration request. He advised that OWCP, in its February 5, 2019 decision, had failed to consider that he had responded to the EN1032 form by letter dated November 7, 2017. Appellant maintained that a claims examiner had verified that he had provided the requested information.

In a March 13, 2019 response, OWCP informed appellant that, as set forth in its December 21, 2018 letter, the March 9, 2018 correspondence had not identified an appeal right that he wished to pursue. On April 9, 2019 appellant again asserted that his March 9, 2018 letter had constituted a request for reconsideration, which did not have to be on any particular form.

Appellant submitted April 9 and July 17, 2019 letters to the Secretary of Labor regarding the suspension of his wage-loss compensation.

On February 3, 2020 appellant requested reconsideration. He maintained that OWCP had not adjudicated his March 9, 2018 request for reconsideration thus jeopardizing his right to merit review by the Board. Appellant again noted that a claims examiner had confirmed that he had technically submitted the information requested on the EN1032 form, but still suspended his wage-loss compensation. He asserted that OWCP had failed to review his November 7, 2017 letter to the Secretary of Labor.

By decision dated March 5, 2020, OWCP denied appellant's request for reconsideration as he had not submitted new and relevant evidence or raised an argument sufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

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).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. He contended that he had requested reconsideration on March 9, 2018, but that OWCP had failed to timely adjudicate his request, thus jeopardizing merit review by the Board. Appellant further maintained that an OWCP claims examiner had confirmed that he had submitted the information on the EN1032 form. However, OWCP had previously considered these arguments. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record does not constitute a basis for

⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

reopening a case.⁹ Appellant further maintained that OWCP failed to review the evidence contained in his November 7, 2017 letter. However, in its February 5, 2019 decision, OWCP noted that he had copied information from the EN1032 form onto an October 9, 2018 letter. The November 7, 2017 letter, however, was substantially similar to the October 9, 2018 correspondence previously considered by OWCP in its February 5, 2019 decision. As discussed, the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record has no evidentiary value and does not constitute a basis for reopening a case for further merit review.¹⁰ Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted April and July 2019 letters to the Secretary of Labor that were substantially similar to prior letters of record and thus insufficient to warrant reopening his case for further merit review.¹² As he did not provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

On appeal, appellant raises arguments relevant to the merits of his claim. As explained above, however, the Board lacks jurisdiction to review the merits of the claim. The only decision properly before the Board is the March 5, 2020 decision for which appeal was sought.¹⁴

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.¹⁵

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).

⁹ *D.F.*, Docket No. 20-0773 (issued December 8, 2020); *D.M.*, Docket No. 18-1003 (issued July 16, 2020).

¹⁰ *Id.* See *C.L.*, Docket No. 20-0410 (issued October 29, 2020).

¹¹ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹² *Id.*

¹³ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁴ OWCP will reinstate wage-loss compensation retroactive to the date of suspension if appellant completes, signs, and submits the EN1032 form. 20 C.F.R. § 10.528.

¹⁵ *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board