

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

_____)	
T.C., Appellant)	
)	
and)	Docket No. 21-1041
)	Issued: October 20, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Warwick, RI, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 23, 2021 appellant filed a timely appeal from a January 25, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated September 23, 2019, 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 to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's January 15, 2021 request for reconsideration, finding that the only appeal option was to the Board.

¹ The Board has duly considered the matter and finds that the letter dated January 25, 2021, while not accompanied by appeal rights, constitutes a final adverse decision by OWCP.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 26, 2013 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his lower neck and shoulder blade while he was pulling hard on a “CBU” in the performance of duty. OWCP assigned OWCP Claim No. xxxxxx187. Appellant stopped work on September 27, 2013 and returned to work on September 30, 2013. On December 16, 2013 OWCP accepted the claim for right cervical radiculopathy and right sprain of neck.

On May 31, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of his September 26, 2013 injury on May 12, 2017 when he experienced a sharp pain in his neck and numbness in his fingers while delivering mail on his route. He stopped work on May 12, 2017.

OWCP informed appellant, by letter dated June 21, 2017 that, based upon the information contained in the CA-2a, it was administratively converting appellant’s recurrence claim to a new traumatic injury claim under OWCP No. xxxxxx253.

By decision dated February 7, 2018, OWCP denied the traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to his accepted employment activities of May 12, 2017.

Appellant submitted a timely request for oral hearing before a representative of the Branch of Hearings and Review. By decision dated December 20, 2018, the hearing representative affirmed OWCP’s prior decision.

On June 25, 2019 appellant requested reconsideration. In a merit decision dated September 23, 2019, OWCP denied modification of the December 20, 2018 decision.

In a request filed on September 30, 2020, appellant again requested reconsideration. On December 15, 2020 OWCP denied appellant’s request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On January 15, 2021 appellant expressed his disagreement with OWCP’s determination that his request for reconsideration was untimely filed, and requested reconsideration of OWCP’s December 15, 2020 nonmerit decision.

By decision dated January 25, 2021, OWCP denied appellant’s request for reconsideration, finding that the only appeal option was to the Board.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. For

³ *Id.* at § 8128(a); *see M.G.*, Docket No. 21-0893 (issued December 27, 2021); *T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁴ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP regulations provide:

"Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(3), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration."⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's January 15, 2021 request for reconsideration, finding that the only appeal option was to the Board.

By decision dated February 7, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to his accepted employment activities of May 12, 2017. Appellant timely requested an oral hearing before a representative of the Branch of Hearings and Review. By decision dated December 20, 2018, the hearing representative affirmed OWCP's prior decision.

On June 25, 2019 appellant requested reconsideration. In a merit decision dated September 23, 2019, OWCP denied modification of the December 20, 2018 decision. In a request filed on September 30, 2020, appellant again requested reconsideration. On December 15, 2020 OWCP denied appellant's request, finding that it was untimely filed and failed to demonstrate clear evidence of error. On January 15, 2021 appellant disagreed with OWCP's determination that his request for reconsideration was untimely filed, and requested reconsideration of OWCP's December 15, 2020 nonmerit decision. By decision dated January 25, 2021, OWCP denied appellant's request for reconsideration, finding that the only appeal option was to the Board.

As explained above, OWCP's regulations provide in part that "A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of nonmerit decision is an appeal to the ECAB (see § 10.625), and

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁶ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *See* 20 C.F.R § 10.608(b).

OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.”⁸ As appellant requested reconsideration of the December 15, 2020 nonmerit decision, OWCP properly found that the only appeal option was to the Board. Therefore, the Board finds that OWCP properly denied appellant’s reconsideration request pursuant to 20 C.F.R. § 10.608(b).

CONCLUSION

The Board finds that OWCP properly denied appellant’s January 15, 2021 request for reconsideration, finding that the only option for appeal was to the Board.

IT IS HEREBY ORDERED THAT the January 25, 2021 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: October 20, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees’ Compensation Appeals Board

⁸ *Id.*