

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

R.C., Appellant)	
)	
and)	Docket No. 24-0194
)	Issued: April 10, 2024
CONSUMER FINANCIAL PROTECTION)	
BUREAU, SOUTHWEST REGION,)	
Jacksonville, FL, Employer)	
)	

Appearances:
Paul H. Felser, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 21, 2023 appellant, through counsel, filed a timely appeal from a September 27, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 1,

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 an 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.

2022, 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.³

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

This case has previously been before the Board on a different issue.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 4, 2015 appellant, then a 44-year-old financial institution examiner, filed an occupational disease claim (Form CA-2) alleging that his preexisting hypertrophic obstructive cardiomyopathy with ventricular tachycardia worsened due to stress from his federal employment. He noted that he first became aware of his claimed condition on November 23, 2011 and realized its relationship to his federal employment on October 30, 2015. OWCP accepted the claim for the conditions of aggravation of obstructive hypertrophic cardiomyopathy and aggravation of ventricular tachycardia.

A Standard Form (SF) 50 indicated that appellant retired on January 3, 2017. The record reflects that appellant's retirement program is the Federal Reserve System (FRS) Retirement Plan.

On August 5, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 3, 2015 through August 5, 2020.

In a May 25, 2021 letter, OWCP advised appellant that FECA benefits and appellant's pension under the FRS retirement plan constituted a prohibited dual benefit, and he would need to elect between the two benefits. Appellant thereafter elected FECA compensation benefits, effective January 3, 2017. He, however, asserted that he was entitled to receive his pension benefits and FECA benefits concurrently.

OWCP paid appellant wage-loss compensation on its supplemental rolls for the period January 3, 2017 through September 11, 2021, and on its periodic compensation rolls as of September 12, 2021.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the September 27, 2023 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.*

⁴ Docket No. 19-0696 (issued September 25, 2019).

By decision dated November 26, 2021, OWCP denied appellant's claim for wage-loss compensation for the period October 3, 2015 through January 2, 2017.

On December 24, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 19, 2022.

By decision dated July 1, 2022, OWCP's hearing representative affirmed the November 26, 2021 decision.

On June 29, 2023 appellant, through counsel, requested reconsideration.

In June 7 and September 16, 2022 letters, appellant alleged that OWCP unlawfully took away his pension. He asserted that an FRB Bank pension was not a governmental plan and thus could not constitute dual benefits. Appellant also contended that OWCP usurped the authority of the trustee of FRS illegally. OWCP also received correspondence from his congressional representative dated July 14 and August 10, 2022, who contended that appellant's selection of FECA benefits should not preclude him from receiving his FRS pension. It also received appellant's December 5, 2022 letter to the President of the United States, alleging that it improperly disallowed his FRS disability pension, which was run by the FRS, a non-governmental entity.

By decision dated September 27, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ 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.⁷ A timely application for reconsideration, including all supporting documents, must set forth arguments 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.⁸ When a timely application for reconsideration does not meet at least one

⁵ 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/her] own motion or on application.” 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607.

⁷ *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 2020). 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). *Id.* at Chapter 2.1602.4b.

⁸ 20 C.F.R. § 10.606(b)(3).

of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

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).

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Appellant continued to argue that the FRS retirement plan was not a federal plan. However, this argument was previously raised and considered by OWCP in its prior merit decisions.¹⁰ 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).

Furthermore, appellant has not provided relevant and pertinent new evidence in support of his request for reconsideration. On reconsideration, he submitted correspondence wherein his congressional representative contended that his selection of FECA benefits should not preclude him from receiving his FRS pension. Appellant also submitted a December 5, 2022 letter to the President of the United States, contending that OWCP improperly disallowed his FRS disability pension. The additional evidence received on reconsideration, while new, contained allegations previously considered by OWCP. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.¹¹ As such, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹²

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.¹³

⁹ *Id.* at § 10.608(a), (b).

¹⁰ *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *See K.F.*, Docket No. 24-0052 (issued March 26, 2024); *R.H.*, Docket No. 23-0033 (issued September 20, 2023); *C.B.*, Docket No. 19-0419 (issued July 22, 2019); *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹² *See* 20 C.F.R. § 10.606(b)(3)(iii).

¹³ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

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 September 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2024
Washington, DC

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

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

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