

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

P.S., Appellant)
)
and) **Docket No. 15-448**
) **Issued: May 4, 2015**
U.S. POSTAL SERVICE, POST OFFICE,)
Hazelwood, MO, Employer)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 19, 2014 appellant filed a timely appeal from a July 10, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for further merit review. As more than 180 days elapsed from the last merit decision of February 24, 2014 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 over the merits of this claim.²

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence with her appeal. The Board may not consider new evidence for the first time on appeal as its review of a case is limited to the evidence that was before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On August 16, 2011 appellant, then a 47-year-old mail handler, filed a claim for injuries to her neck and left arm while putting trays on the belt. OWCP accepted the claim for a cervical strain, left trapezius sprain, and left shoulder sprain and paid benefits. Appellant was provided conservative medical care, including physical therapy.

On September 7, 2011 Dr. Sheikh M. Zahid, an internist, released appellant to return to her regular-duty position. He reported normal shoulder examination, noting that range of motion was normal and tests were negative. There was no tenderness of the shoulder, including the biceps tendon.

On November 18, 2013 appellant filed a Form CA-2a, notice of recurrence, claiming a need for additional medical care for her accepted work-related conditions. She was on limited/light duty and had a torn rotator cuff of the left shoulder. No supporting documentation was received with the claim. By letter dated December 17, 2013, OWCP advised appellant that additional factual and medical information was needed to establish a recurrence of injury and provided her 30 days in which to submit the requested information. No further factual or medical evidence was received. By decision dated February 24, 2014, OWCP denied the recurrence claim beginning November 18, 2013 as the evidence was insufficient to establish a worsening of appellant's accepted work-related conditions.

On June 16, 2014 appellant requested reconsideration. In a May 23, 2014 statement, she stated that her primary care physician advised her that surgery would not help her condition and that she required pain management therapy. Appellant further stated that her injury had worsened and that she had seen a specialist. She advised that she had nerve damage in her hand, but could not afford therapy. Appellant stated that treatment was necessary as the pain from her injuries caused hypertension. No medical information was submitted.

By decision dated July 10, 2014, OWCP denied reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to

³ Under section 8128(a) of FECA, the 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. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The issue is whether appellant has submitted sufficient evidence relevant to the issue of whether she has sustained a recurrence of the accepted injury. Her request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. While appellant indicated in her May 23, 2014 statement that her injury had worsened, that is a medical determination.⁷ Her lay opinion on the cause of her condition is insufficient to discharge her burden of proof. The Board has held that lay individuals are not competent to render a medical opinion.⁸ 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)(2).

The Board also finds that appellant did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits. While appellant advised that she had a torn rotator cuff of the left shoulder, she submitted no medical evidence from a physician to support that diagnosis or which contained a medical explanation as to the relationship between her current condition and the accepted August 16, 2011 work incident or accepted conditions. Thus, there is no evidence sufficient to reopen her claim for further merit review.

The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.⁹

On appeal, appellant contends that her injuries are worsening and the record does not contain a lot of submitted documentation.¹⁰ However, as noted above, she submitted no medical evidence to support her recurrence claim. While appellant indicated that her occupational disease claim with her right hand was ignored, the Board notes that a right hand condition is not part of this claim.¹¹

⁶ *Id.* at § 10.608(b).

⁷ *See D.G.*, Docket No. 06-1400 (issued October 10, 2006).

⁸ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁹ *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

¹⁰ Appellant submitted new evidence with her appeal. The Board may not consider new evidence for the first time on appeal as its review of a case is limited to the evidence that was before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

¹¹ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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