

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

Y.G., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer)))))))))))	Docket No. 13-708 Issued: June 24, 2013
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2013 appellant filed a timely appeal from an August 27, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than one year elapsed from the last merit decision dated July 1, 2008 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.²

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to file a Board appeal. *See* 20 C.F.R. § 501.3(d)(2) (2008). For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file a Board appeal. *See* 20 C.F.R. § 501.3(e) (2009).

FACTUAL HISTORY

This case has previously been before the Board. On July 1, 2008 the Board affirmed a February 16, 2007 OWCP hearing representative's decision, which affirmed a September 20, 2006 denial of appellant's emotional condition claim.³ The Board found that she failed to substantiate any compensable factor of employment. The Board also affirmed OWCP's August 7, 2007 decision denying appellant's request for reconsideration. In a December 19, 2009 decision, the Board affirmed a January 16, 2009 nonmerit OWCP decision, which declined to reopen her case for further consideration of the merits.⁴ The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference.⁵

On December 21, 2010 OWCP received appellant's December 14, 2010 request for reconsideration. Appellant stated that she should have filed her claim as a recurrence of an accepted neck injury⁶ and not a new injury.

By decision dated August 27, 2012, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP's regulations provide that 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.⁸ 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.⁹ When a claimant fails to meet one of the above standards, OWCP

³ Docket No. 08-467 (issued July 1, 2008).

⁴ Docket No. 09-1320 (issued December 17, 2009).

⁵ On August 1, 2006 appellant, then a 37-year-old postal mail handler, filed an occupational disease claim alleging depression, anxiety, panic attacks and persistent nervousness due to the actions of her supervisor, Betty Jones. She first became aware of the condition and its relationship to her employment on February 27, 2006.

⁶ Appellant noted the claim number for her neck injury as xxxxxx241 with an injury date of April 11, 2003.

⁷ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁸ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁹ 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

On December 14, 2010 appellant requested reconsideration. However, she did not submit any relevant and pertinent new evidence or new relevant argument with her request. In her request, appellant noted that she should have filed a claim for a recurrence under another claim instead of filing a new occupational disease claim. Because she did not raise new arguments or present new evidence that OWCP erroneously applied or interpreted a specific point of law; advanced any relevant legal arguments not previously considered by OWCP; or present any relevant and pertinent new evidence, she is not entitled to further review of the merits of her claim under any criteria of section 10.606(b)(3).¹¹

As appellant did not meet any of the regulatory requirements for review of the merits of her claim, OWCP properly denied her December 14, 2010 request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

¹⁰ 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

¹¹ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *W.C.*, 59 ECAB 372 (2008); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 27, 2012 is affirmed.

Issued: June 24, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board