

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

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**S.E., Appellant**

**and**

**U.S. POSTAL SERVICE, PRIORITY MAIL  
ANNEX, Kent, WA, Employer**

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**Docket No. 13-1746  
Issued: October 28, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 12, 2013 appellant filed a timely appeal from a January 16, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than 180 days elapsed from the most recent merit decision dated December 19, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.* Since using July 18, 2013, the date the appeal was docketed by the Clerk of the Board, would result in the loss of appeal rights, the date of the July 12, 2013 postmark is considered the date of filing. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> *See* 20 C.F.R. § 501.3(e).

## **FACTUAL HISTORY**

On April 24, 2012 appellant, then a 41-year-old mail handler, filed an occupational disease claim and submitted a narrative statement alleging a right shoulder rotator cuff tear as a result of dumping sacks onto a “SPBS [small parcel and bundle sorter]” machine. He also lifted heavy flat rate Priority Mail boxes, letter trays and large sacks at work.

By letter dated October 5, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

On October 31, 2012 appellant stated that he spent one and one-half hours a day on the computer. He further stated that he did not engage in any other hobbies, exercise or sports activities due to his shoulder pain.

The record contains various medical records and statements dated November 22, 2004 through November 1, 2012 addressed appellant’s right shoulder conditions, medical treatment, permanent impairment, work capacity and physical restrictions.

In a December 19, 2012 decision, OWCP denied appellant’s claim. It found that the medical evidence was insufficient to establish that he sustained right rotator cuff tear causally related to the accepted factors of his employment.

On January 4, 2013 appellant requested reconsideration. He did not submit any additional medical evidence or legal arguments.

In a January 16, 2013 decision, OWCP denied appellant’s request for reconsideration. It found that he did not raise any substantive legal questions or submit new and relevant evidence warranting further merit review of his claim.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

### **ANALYSIS**

By decision dated December 19, 2012, OWCP denied appellant's occupational disease claim on the grounds that the medical evidence did not establish that the accepted employment factors caused his right shoulder condition. Appellant requested reconsideration on April 16, 2012, but did not submit any additional evidence or legal argument before issuance of the January 16, 2013 nonmerit decision. Because he failed to meet any of the standards enumerated under section 8128(a) of FECA or implementing federal regulations, he was not entitled to further merit review of his claim.

Appellant contends on appeal that he submitted medical documentation stating that he sustained a work-related injury in support of his reconsideration request. The Board notes that the case record does not contain such evidence.<sup>6</sup> OWCP properly denied the application without reopening the case for a review on the merits.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>6</sup> The Board notes that, following issuance of OWCP's January 16, 2013 decision, appellant submitted additional evidence. The Board may not consider such evidence for the first time on appeal as its review is limited to the evidence that was before OWCP at the time of its decision. 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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