

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

T.J., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Richmond, VA, Employer**

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**Docket No. 13-1271
Issued: September 3, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2013 appellant filed a timely appeal of an April 11, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration. As more than 180 days has elapsed from the issuance of the most recent merit decision of October 5, 2012, to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction over the nonmerits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the April 11, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that OWCP was not diligent in filing evidence for her case as it lost a November 7, 2012 report from Dr. Dexter Love, a Board-certified orthopedic surgeon, which she submitted with her request for reconsideration.

FACTUAL HISTORY

On January 4, 2012 appellant, then a 47-year-old system analyst, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury as a result of lifting, bending, packing and carrying equipment in the performance of duty on January 3, 2012.

By decision dated March 2, 2012, OWCP denied the claim on the basis that appellant had not established fact of injury.

Appellant requested reconsideration on March 6, 2012.

By decision dated June 20, 2012, OWCP denied modification of the March 2, 2012 decision.

On June 20, 2012 appellant requested reconsideration for a second time. By decision dated October 5, 2012, OWCP denied modification of the June 20, 2012 decision.

On October 10, 2012 appellant requested reconsideration of the October 5, 2012 decision, indicating that she had enclosed additional medical evidence.

By decision dated April 11, 2013, OWCP denied appellant's request for reconsideration of the merits noting that additional evidence was not received. Appellant did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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.⁵ To be entitled to a merit review

³ 5 U.S.C. § 8101 *et seq.* 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).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

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.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

On appeal, appellant contends that OWCP was not diligent in filing evidence for her case as it lost a November 7, 2012 report from Dr. Love which she submitted with her request for reconsideration. On October 10, 2012 she requested reconsideration, indicating that she had enclosed additional medical evidence. In its April 11, 2013 decision, OWCP denied appellant's request, noting that additional medical evidence was not received as part of the reconsideration request. As the record shows that OWCP did not receive any additional medical evidence from appellant, the Board finds that her argument is not substantiated.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Because she did not submit any evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.

The Board notes that, following the issuance of the April 11, 2013 OWCP decision on appeal, appellant submitted new medical evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Appellant may resubmit this evidence, together with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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