

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

S.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Nashville, TN, Employer)

**Docket No. 15-1445
Issued: November 23, 2015**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 24, 2015 appellant filed a timely appeal from a December 31, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last OWCP merit decision of May 16, 2013 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.

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).

FACTUAL HISTORY

This case has previously been before the Board. By decision dated May 20, 2014, the Board affirmed OWCP's May 16, 2013 decision which found that the evidence of record failed

¹ 5 U.S.C. § 8101 *et seq.*

to establish total disability due to appellant's accepted conditions of bilateral plantar fasciitis and heel spurs.² The facts of the case, as set out in the Board's prior decision, are incorporated herein by reference.

On August 28, 1998 appellant, then a 40-year-old data collection technician, filed an occupational disease claim (Form CA-2) alleging a bilateral foot condition due to factors of her federal employment. She had been employed as a data collection technician since October 1, 1983. In May 1999, appellant was officially reassigned to a distribution clerk position. The employing establishment provided her modified work and she continued to work in the distribution clerk position until February 11, 2000, when she stopped work for nonwork-related surgery. On May 31, 2000 appellant resigned from the employing establishment. In July 2002, OWCP accepted her 1998 claim for bilateral plantar fasciitis and heel spurs. By decision dated November 18, 2002, it granted appellant a schedule award for 19 percent permanent impairment of each lower extremity, which was paid for 109.44 weeks over the period August 19, 2002 to September 23, 2004.

On June 27, 2006 appellant filed a Form CA-7 claiming wage-loss compensation for the period September 24, 2004 through June 27, 2006. In a July 12, 2006 letter, the employing establishment stated that she retired on May 31, 2000 and her resignation was not related to her on-the-job injury. It advised that it had accommodated appellant during her February 2000 surgery. The employing establishment also noted that, while her physician had provided work restrictions on August 19, 2002, no job offer was made as appellant had resigned her employment.

By decision dated November 15, 2006, OWCP denied appellant's claim for compensation commencing September 24, 2004 as the evidence of record failed to establish total disability due to the accepted conditions under this case. Appellant requested reconsideration several times. In decisions dated May 30 and November 5, 2007, January 8 and July 28, 2009, September 7, 2010, November 21, 2011, March 21 and December 19, 2012 and May 16, 2013, OWCP denied modification of its prior decisions.

The Board affirmed OWCP's May 16, 2013 decision on May 20, 2014. The Board found that appellant had not established a recurrence of total disability as of September 24, 2004, due to her accepted employment conditions. The Board noted that she was performing light duty as of the date that she resigned her employment, that appellant had not established a change in the nature and extent of her injury-related conditions, and she had not established a change in the nature and extent of the limited light-duty requirements. Finally, the Board explained that as she had resigned her employment in May 2000, OWCP was not obligated to offer her a position in 2004.

Following the Board's May 20, 2014 decision, OWCP received a November 24, 2014 letter from appellant on December 1, 2014 requesting reconsideration. Evidence received in support of the reconsideration request included duplicative medical evidence dated January 7, 1998, May 12 and September 22, 1999, May 30, 2000, June 26, 2002, and December 15, 2004.

² Docket No. 14-233 (issued May 20, 2014).

Other evidence, previously of record, was also received. This included: intra-office correspondence dated November 29, 1979, a June 29, 1999 Equal Employment Opportunity Agreement, an October 14, 1998 light-duty job offer, an April 22, 1999 request for light duty; a May 8, 1999 reassignment paperwork, May 13, 1999 letter, July 29, 1999 temporary light-duty job offer, August 23, 1999 letter regarding leave grievance, November 14, 2001 letter from OWCP, June 28, 2002 memorandum from the employing establishment responding to hearing transcript, an October 6, 2004 Form EN1032, a July 12, 2005 letter regarding shoes, and a July 12, 2005 letter from Randy Wilson.

Additional evidence submitted included: intra-office correspondence dated August 30, 1995, July 10, August 4 and 22, November 5 and 8, 1997, January 23, June 17, September 10 and October 1, 1998; leave slips dated June 23, 1989, July 30, 1997, June 1 and October 14, 1999; a May 26, 1999 job ID printout; a September 9, 1999 light-duty job form; an October 9, 1999 reassignment document; copies of paycheck stubs with notes indicating that she worked overtime, used leave, and was reprimanded; an April 14, 1999 police report regarding a break-in at her house; a November 20, 1999 position reassignment history; a December 16, 2004 letter from the Office of Personnel Management; a November 15, 2006 record of telephone call to Randy Wilson, with a note stating that the downgrade from level 6 to level 5 needed to be compensated; an April 21, 2008 position description for distribution clerk with a note indicating she was unable to do the job as it was too strenuous; a September 8, 2009 position description for data conversion operator; and a March 6, 2013 e-mail from American Postal Workers Union discussing the data conversion and keyer titles.

In an October 9, 2014 statement, appellant requested claim expansion to include the low back and neuropathy. She stated that she had resigned from her employment because her work schedule and the nonchallenging job resulted in stress. Appellant contended that the modified position did not pay what she was earning when she was injured and did not conform to her restrictions. She alleged that she had back issues and that wearing closed toe shoes caused chronic pain. Appellant stated that the employing establishment requested that she come back to work in June 2000 per USPS form letter dated June 12, 2000. She mentioned numerous personnel problems and allegations of a hostile work environment. Appellant demanded answers to questions she had raised regarding her previous position and disputed findings made in prior decisions. She also faulted OWCP for not offering her an open election and for implying entitlement to future OWCP benefits when she received a Form EN1032 in October 2004 erroneously. In two other statements, appellant discussed that she did not have a large enough locker at the employing establishment, she had encountered a hostile work environment, and had other problems with her light-duty job. She argued that the excessive use of leave proved her case “from a Social Security standpoint.”

By decision dated December 31, 2014, OWCP denied reconsideration of the March 26, 2014 decision³ 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,⁴ 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.⁵

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.⁶ However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board.⁷

If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

On December 1, 2014 OWCP received appellant's November 24, 2014 request for reconsideration. To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁹ The Board has held, however, that OWCP procedures¹⁰ should be interpreted to mean

³ This case does not contain a March 26, 2014 decision. Such decision is contained in appellant's claim number xxxxxx454. Under claim number xxxxxx454, appellant had filed a traumatic injury claim on August 21, 2001 alleging a back injury. By decision dated January 7, 2005, the Board affirmed OWCP's decision dated October 17, 2003 which found appellant had failed to meet her burden of proof to establish that her back condition was caused or aggravated in the performance of duty and OWCP's May 4, 2004 decision which declined to reopen appellant's claim for consideration of the merits. Docket No. 04-1608 (issued January 7, 2005). In a March 26, 2014 decision, the Board found OWCP properly denied appellant's March 1, 2013 reconsideration request finding it was untimely filed and failed to establish clear evidence of error. Docket No. 13-1681 (issued March 26, 2014).

⁴ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *D.G.*, 59 ECAB 455 (2008); *see also C.J.*, Docket No. 12-1570 (issued January 16, 2013).

⁸ 20 C.F.R. 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *Supra* note 6.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011).

that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹¹ As the Board's May 20, 2014 decision was the last merit decision of record and the November 24, 2014 request for reconsideration was received on December 1, 2014, within one-calendar year of the last merit decision, appellant's request was timely. The question for determination is whether her request met at least one of the three standards for obtaining a merit review of her case.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated May 20, 2014, the Board found appellant had not met her burden of proof to establish a recurrence of total disability commencing September 24, 2004 causally related to her accepted conditions of bilateral plantar fasciitis and heel spurs. Appellant submitted numerous pieces of duplicative medical evidence and other evidentiary material previously considered. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹²

The new evidence consists of arguments and evidence which are irrelevant and immaterial to the issue of recurrence of total disability, due to the accepted conditions in this case. The arguments, questions, and allegations raised by appellant concerning position reassignment, compensation for downgrading, personnel problems, allegations of a hostile work environment, and questions related to the job from which she resigned are outside the scope of the recurrence claim which alleged disability as of September 24, 2004. The Board therefore finds that the arguments and evidence submitted to support appellant's reconsideration request do not constitute relevant and pertinent new evidence. As the Board explained in its prior decision, the evidence of record establishes that appellant resigned from her employment on May 31, 2000 after nonwork-related surgery. It is appellant's burden of proof to establish that she was totally disabled as of September 24, 2004 due to her accepted work-related conditions. None of the new evidence appellant submitted in support of her request for reconsideration addresses this narrow issue.

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP and she did not submit relevant and pertinent new evidence not previously considered by OWCP.

On appeal, appellant presented arguments that her light duty, temporary or modified-duty position was not suitable work. She asserted it violated her restrictions and she was forced to work overtime and that these were changes in the nature of the light-duty job. However, the Board does not have jurisdiction over the merits of the claim on the present appeal.

¹¹ See *Mary E. Schipske*, 43 ECAB 318 (1991); see also *John W. O'Connor*, 42 ECAB 797 (1991).

¹² *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening her case, the Board finds that OWCP properly denied a merit review.

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 December 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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