

FACTUAL HISTORY

On May 24, 2005 appellant, then a 42-year-old courtroom deputy, filed a traumatic injury claim (Form CA-1) alleging an injury on May 23, 2005 due to a slip and fall at work. She stopped work the day of her injury and received continuation of pay. OWCP initially accepted appellant's claim for right foot/ankle sprain and right metatarsal fracture. Appellant underwent right ankle surgery in August 2005. OWCP paid appellant for intermittent wage-loss compensation for the period July 21, 2005 through January 5, 2006. It subsequently expanded appellant's claim to include right foot reflex sympathetic dystrophy.

In a November 20, 2005 attending physician's report (Form CA-20), Dr. Nathan D. Ivey, a podiatrist, advised that appellant was capable of light-duty work effective September 2005 with the following restrictions: weight-bearing as tolerated.

Appellant resigned from federal service effective January 25, 2006.

From 2006 through 2012 appellant continued to receive treatment for her right lower extremity pain disorder.

On April 18, 2013 OWCP awarded appellant a schedule award for 10 percent permanent impairment of the right lower extremity. The award covered a 28.8-week period from November 30, 2012 through June 19, 2013.

In August 2013, OWCP expanded appellant's claim to include complex regional pain syndrome (CRPS) or right foot causalgia.

On August 8, 2013 appellant filed a claim for wage-loss compensation (CA-7 and CA-7a forms) for the period November 6, 2006 through November 29, 2012 and June 20, 2013 and continuing. In support of her claim, she submitted an employment history indicating that she had worked as a legal assistant for a law firm from April 2006 to 2009 and then as a self-employed contractor from 2010 to the present. Appellant also submitted a worksheet indicating her hours of disability for the period July 21, 2005 through January 5, 2006.³

In a September 26, 2013 letter, OWCP advised appellant of the need to submit medical evidence in support her claimed period(s) of disability. It afforded her 30 days to submit additional evidence.

In a second letter dated September 26, 2013, OWCP requested additional information from the employing establishment regarding appellant's work or any job offers made to appellant during the period claimed.

Appellant submitted progress notes from Dr. Craig S. Nairn, a Board-certified anesthesiologist and pain medicine specialist, covering the period May 21, 2013 through April 11, 2014. Dr. Nairn's diagnoses included lower extremity CRPS, with associated chronic pain syndrome and classical migraine.

³ OWCP previously paid appellant for the claimed period in June 2006.

Subsequently, the employing establishment submitted a Notification of Personnel Action (SF-50) indicating that appellant had resigned from federal employment effective January 25, 2006.

In a May 5, 2014 letter, the employing establishment noted that there was no additional job offered to appellant after she resigned on January 25, 2006.

On June 30, 2014 appellant indicated that she was forced to resign her position as courtroom deputy and basically had no choice but to resign and/or get fired from her position at the time of her meeting with the Clerk of the Court and the Chief Deputy Clerk. She further indicated that it was unclear to her at the time whether she would require any special accommodations and/or physical requirements for work because she was still going through physical therapy for her foot, so neither she nor the employing establishment knew that she would require work accommodations.

Appellant continued to submit monthly progress notes from Dr. Nairn. In a June 18, 2015 report, Dr. Nairn indicated that appellant was under his care for CRPS of the lower extremity and she had tried numerous modalities of treatment. He advised that appellant's pain limited her ability to function and would be expected to interfere with her ability to work.

By decision dated September 30, 2015, OWCP denied appellant's claim for disability for the period November 6, 2006 to November 29, 2012 and from June 20, 2013 continuing because the medical evidence of record failed to establish total disability due to the accepted employment injuries. It found that there was no evidence of record to support that the employing establishment was not accommodating appellant's weight-bearing restrictions when she resigned on January 25, 2006.

On March 14, 2016 appellant requested an expansion of her accepted conditions to include depressive disorder, anxiety disorder, and agoraphobia and submitted medical evidence regarding her psychiatric conditions in support of her claim.

On September 30, 2016 appellant requested reconsideration of the September 30, 2015 decision and submitted reports dated September 8 and October 7, 2016 from Dr. Nairn who continued to diagnose CRPS of the right lower limb and chronic pain syndrome.

OWCP referred appellant for a second opinion psychiatric evaluation. In an October 26, 2016 report, Dr. Lori A. Willinghurst, a Board-certified psychiatrist, diagnosed major depressive disorder, single, moderate and opined that appellant's condition was causally related to her accepted work injury.

In an October 26, 2016 report, Dr. Nairn reiterated his diagnoses and indicated that appellant continued to complain of pain in her right foot with radiation up the leg above the knee.

In a decision dated December 21, 2016, OWCP expanded appellant's claim to include major depressive disorder, single moderate.

By decision dated December 21, 2016, OWCP denied appellant's request for reconsideration without a merit review because she failed to advance a relevant legal argument

or submit any relevant and pertinent new evidence. It found that the medical evidence appellant submitted was irrelevant because it failed to establish that the employing establishment was not accommodating her work restrictions when she resigned on January 25, 2006.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The Board finds that appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

In support of her reconsideration request, appellant submitted reports from Dr. Nairn who continued to diagnose CRPS of the right lower limb. The Board finds that submission of this evidence did not require reopening appellant's case for merit review because it failed to address the point at issue before OWCP. As OWCP denied the claim based on the lack of supportive evidence establishing that the employing establishment was not accommodating appellant's weight-bearing work restrictions when she resigned on January 25, 2006, the Board finds that these additional medical reports do not constitute pertinent new and relevant evidence. The reports further failed to address appellant's disability for the periods claimed due to her accepted

⁴ This section provides in pertinent part: "[t]he 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).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

right lower extremity conditions.⁹ Therefore, they are insufficient to require OWCP to reopen appellant's claim for consideration of the merits. Appellant also submitted medical evidence regarding her psychiatric condition, which was subsequently accepted by OWCP as a work-related injury.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2017
Washington, DC

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

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

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

⁹ The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case. *See C.H.*, Docket No. 16-0171 (issued September 5, 2017); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).