

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

S.B., Appellant)	
)	
and)	Docket No. 18-1535
)	Issued: April 3, 2019
U.S. POSTAL SERVICE, CONWAY POST)	
OFFICE, Conway, SC, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISCHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 8, 2018 appellant, through counsel, filed a timely appeal from a July 10, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a Board decision dated September 20, 2017, which became final after 30 days and is not subject to further review.² As there was no merit decision by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 20 C.F.R. § 501.6(d).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On July 24, 2015 appellant, then a 52-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2014 she sustained, neck, arm, and back injuries as a result of a motor vehicle accident while she was on her way to work in the morning using her personal vehicle. On the back of the form the employing establishment challenged the claim asserting that it had not occurred while in the performance of duty. Appellant stopped work on the date of the incident and has not returned.

In a July 31, 2015 development letter, OWCP informed appellant that the documentation received in her claim had been reviewed and was insufficient to establish her claim. It instructed her to provide additional factual and medical documentation and complete an enclosed questionnaire. OWCP afforded appellant 30 days to respond.

On August 4, 2015 OWCP received a statement from D.F., postmaster, and G.G., appellant's supervisor at the time of the accident, noting that appellant was not in the performance of duty at the time of the motor vehicle accident. They explained that she was scheduled to deliver mail that day on route 20, which had an assigned motor vehicle for the delivery route. As there was an assigned employing establishment vehicle, appellant's personal vehicle was not "hired for delivery" of mail that day.

In a September 4, 2015 memorandum of conference between an OWCP claims examiner and C.J., an employing establishment human relations specialist, the claims examiner sought clarification from the employing establishment regarding the issue of performance of duty as appellant's work shift began at 7:00 a.m. and the accident occurred at 8:30 a.m. C.J. reiterated that she was scheduled to drive an employing establishment vehicle that day and not her personal vehicle. He further noted that shifts for rural carriers could differ daily, but that appellant had not clocked into work at the time of the accident, and was on her way to work.

By decision dated September 4, 2015, OWCP denied appellant's claim, finding that she was not in the performance of duty at the time of the alleged injury. In support of its finding, it noted that the motor vehicle accident occurred while she was on her way to work in her personal motor vehicle, she had been scheduled to use an employment vehicle to deliver mail, and that the incident occurred before her tour of duty began.

⁴ Docket No. 16-1839 (issued September 20, 2017).

On October 4, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on May 23, 2016.

During the hearing counsel alleged that appellant had to use her personal vehicle to deliver mail approximately 95 percent of the time. On the day in question, appellant was filling in for a coworker and was uncertain whether she was required to use her personal vehicle to deliver mail.

On November 3, 2015 D.F. responded to two questions posed by OWCP. He noted that rural carrier associate employees were given a weekly schedule by close of business on the Wednesday prior to the upcoming week. Employees were therefore aware of whether they would be using an employing establishment vehicle or their own vehicle to deliver mail. In case of an emergency, the employing establishment would contact the employee the morning of the emergency to advise that they were being called in on an unscheduled day, and whether their motor vehicle or employing establishment vehicle was to be used. Therefore, D.F. concluded that employees were aware in advance as to whether their personal vehicle would be rented/hired that day for employing establishment business.

By decision dated June 24, 2016, OWCP's hearing representative affirmed the denial of appellant's claim. He found that the evidence of record was insufficient to establish that she was in the performance of duty at the time of the March 17, 2014 motor vehicle accident. The hearing representative also found that the record was devoid of any evidence supporting her contention that appellant was only informed after the motor vehicle accident that the employing establishment scheduled her for use of a postal vehicle that day.

On October 4, 2016 appellant, through counsel, appealed to the Board.

By decision dated September 20, 2017, the Board affirmed OWCP's hearing representative's June 24, 2016 decision affirming the denial of her claim. The Board noted counsel's argument that appellant used her personal vehicle 95 percent of the time and did not know whether she would be using her vehicle to deliver mail on the day in question, however, found that this argument was not corroborated. The Board concluded that she was not in the performance of duty when injured on March 17, 2014.

On March 22, 2018 appellant, through counsel, requested reconsideration. Counsel again asserted that she was in the performance of duty as 95 percent of the time she used her own personal vehicle to deliver mail, she was injured on her way into work, and her random assignment to cover for an absent employee was irrelevant to whether she was in the performance of duty. OWCP did not receive additional evidence.

By decision dated July 10, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.

The Secretary, in accordance with the facts found on review, may end, decrease or increase the compensation awarded or award compensation previously refused or discontinued.⁵

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.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

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).

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Counsel contended that she was in the performance of duty at the time of the March 17, 2014 motor vehicle accident as she used her personal motor vehicle 95 percent of the time, was injured on her way into work, and her random assignment to cover for an absentee employee should have no bearing on the issue of performance of duty. This contention, however, was previously raised and addressed by the June 24, 2016 OWCP hearing representative's decision and the Board in its September 20, 2017 decision. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Because this argument has been previously considered, it was insufficient to require OWCP to conduct a merit review. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant has failed to submit relevant and pertinent new evidence not previously considered by OWCP in support of her request for reconsideration. The underlying issue in this case is whether appellant submitted sufficient factual evidence to establish that she was in the performance of duty on March 17, 2014, as alleged. She did not submit factual evidence in support of her request for reconsideration. Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(3); *see also* *K.B.*, Docket No. 18-1392 (issued January 15, 2019); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *B.C.*, Docket No. 17-0388 (issued June 15, 2017); *J.P.*, 58 ECAB 289 (2007).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁰

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 decision of the Office of Workers' Compensation Programs dated July 10, 2018 is affirmed.

Issued: April 3, 2019
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

¹⁰ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).