

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

S.C., Appellant)	
)	
and)	Docket No. 18-0992
)	Issued: February 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Stanwood, WA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 16, 2018 appellant filed a timely appeal from a November 1, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated September 28, 2017, 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 case.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 1, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 4, 2015 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on April 3, 2015, she sustained injuries to her neck, shoulder, hip, and back as a result of a motor vehicle accident. She stopped work on April 7, 2015. OWCP accepted appellant's claim for neck and right hip sprains.

On June 28, 2016 appellant underwent an OWCP-approved right total hip arthroplasty. She received wage-loss compensation for temporary total disability on the supplemental rolls. On October 3, 2016 appellant returned to work in a full-time, limited-duty capacity.

On June 25, 2017 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated July 27, 2017, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ Appellant was afforded 30 days to submit the requested information.

OWCP subsequently received a February 15, 2017 report by Dr. Steven R. English, a Board-certified physiatrist. Dr. English indicated that appellant sought treatment for multiple injuries and pain areas related to an April 3, 2015 work-related injury. Upon physical examination of appellant's right hip, he observed mild tenderness and 5/5 hip flexion. Dr. English diagnosed torn right hip labrum, moderate-to-severe right hip osteoarthritis, and mild right hip dysplasia. He recommended that appellant continue working light duty.

By decision dated September 28, 2017, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record was insufficient to establish permanent impairment of her right lower extremity as a result of the April 3, 2015 employment injury.

On October 23, 2017 appellant requested reconsideration. No evidence was submitted with her request.

By decision dated November 1, 2017, OWCP denied appellant's reconsideration request. It found that her reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, 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).

OWCP did not receive additional evidence of permanent impairment with appellant's October 23, 2017 reconsideration request.⁹ Therefore, the issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim.

The Board finds that, in her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and she did not advance a new and relevant legal argument not previously considered. Consequently, she is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁰

As noted above, OWCP did not receive additional evidence with appellant's reconsideration request. Accordingly, the Board finds she has not submitted relevant and pertinent new evidence not previously considered by OWCP. The Board finds, therefore, that appellant is not entitled to review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹¹

⁵ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

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

⁹ When a claimant does not submit relevant evidence with respect to an increased schedule award, then OWCP may properly determine that appellant has filed an application for reconsideration of a schedule award decision. *See K.K.*, Docket No. 15-1684 (issued October 23, 2015).

¹⁰ *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹¹ *P.L.*, Docket No. 18-1145 (issued January 4, 2019).

As appellant's request for reconsideration did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied her request for reconsideration without reopening the case for a review on the merits.¹²

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 November 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹² *R.C.*, Docket No. 17-0595 (issued September 7, 2017); *M.E.*, 58 ECAB 694 (2007).