

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

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|------------------------------------------|---|------------------------------|
| _____                                    | ) |                              |
| <b>L.J., Appellant</b>                   | ) |                              |
|                                          | ) |                              |
| <b>and</b>                               | ) | <b>Docket No. 19-0211</b>    |
|                                          | ) | <b>Issued: July 10, 2019</b> |
| <b>U.S. POSTAL SERVICE, POST OFFICE,</b> | ) |                              |
| <b>Duluth, GA, Employer</b>              | ) |                              |
| _____                                    | ) |                              |

*Appearances:*  
*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 6, 2018 appellant, through counsel, filed a timely appeal from a September 7, 2018 nonmerit decision of the Office of Workers' Compensation Programs

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<sup>1</sup> 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.

(OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to consider the merits of this case.<sup>4</sup>

### **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**

On December 23, 2016 appellant, then a 46-year-old postal support employee (PSE) mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she experienced a painful knot on the dorsum of her right wrist and forearm as a result of sweeping and loading mail into a delivery bar code sorter (DCBS) machine while in the performance of duty. She accepted a full-time modified-duty position on December 28, 2016. OWCP administratively converted appellant's claim to one for occupational disease.

In a report dated February 13, 2017, Dr. Neil Negrin, a treating Board-certified orthopedic surgeon, diagnosed de Quervain's syndrome of the right wrist. He returned appellant to full duty effective April 10, 2017. On June 5, 2017 Dr. Negrin held appellant off work through June 7, 2017. On June 19, 2017 he held appellant off work through June 21, 2017, then returned her to limited duty. In a report dated June 26, 2017, Dr. Negrin maintained appellant on modified-duty work, pending surgical decompression of the right wrist.

OWCP accepted that the identified employment events occurred as alleged and that appellant had sustained right radial styloid tenosynovitis (de Quervain's tenosynovitis) and a strain of the right hand and wrist in the performance of duty. It later expanded its acceptance of the claim to include a right elbow ganglion cyst.

On September 26, 2017 Dr. Negrin performed an approved right de Quervain's release, and an approved injection and aspiration of a ganglion cyst of the right elbow. He held appellant off work for three weeks commencing September 25, 2017. OWCP paid appellant wage-loss compensation for temporary total disability from June 19 to 21, 2017 and from September 24 to October 13, 2017.

On September 27, 2017 appellant claimed compensation (Form CA-7) for the periods June 10 to 23, June 26, and June 28 to July 7, 2017.

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<sup>2</sup> The Board notes that counsel did not appeal from OWCP's merit decision dated June 20, 2018 which denied appellant's claim for wage-loss compensation. Appellant appealed only the nonmerit decision dated September 7, 2018. Therefore the Board will not consider the June 20, 2018 merit decision on appeal. *See* 20 C.F.R. § 501.3.

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Supra* note 2.

By development letters dated December 5, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish her wage-loss compensation claim. It advised her that Dr. Negrin had maintained her on modified duty work, and had not held her off work for the claimed periods. OWCP afforded her 30 days to respond.

In response, appellant submitted a copy of Dr. Negrin's September 25, 2017 report holding her off work for three weeks postoperatively.

By decision dated December 28, 2017, OWCP denied appellant's claim for wage-loss compensation from June 10 to 23 and June 24 to July 7, 2017 as the medical evidence of record did not establish that the accepted conditions had disabled appellant from work for the claimed periods. OWCP found that Dr. Negrin had released appellant to restricted duty for the claimed periods. Dr. Negrin had not held her off work.

Counsel requested a telephonic oral hearing held before an OWCP hearing representative on May 15, 2018. During the hearing, appellant asserted that she was off work from June 10 to 23, 2017, worked from June 24 to 27, 2017, and again stopped work from June 28 to July 7, 2017. She contended that there was no light-duty work available within her restrictions for the claimed periods.

Appellant provided a January 4, 2018 report by Dr. Negrin, who indicated that appellant had been unable to perform limited-duty work from June 10 to 23, 2017 as the accepted right wrist and elbow injuries prevented her from using her right upper extremity. Dr. Negrin submitted periodic reports through April 9, 2018 which did not address the periods at issue.

Appellant also submitted physical therapy treatment notes dated from January through March 2018.

By decision dated June 20, 2018, an OWCP hearing representative affirmed OWCP's December 28, 2017 decision. He found that appellant had not submitted rationalized medical evidence indicating total disability from work for the dates claimed. The hearing representative noted that the additional evidence submitted following the hearing did not address the periods in question.

On August 20, 2018 appellant, through counsel, requested reconsideration. In support of her request, appellant submitted physical therapy treatment notes dated January to April 2017, a September 26, 2017 operative anesthesia record, and a direct deposit form. She also provided July 9, 2018 reports by Dr. Negrin in which he noted that appellant had "problems with her right elbow from June 10 until July 7, 2017 as well as other periods of time." Additionally, appellant submitted a July 12, 2018 imaging study, reports by Dr. Negrin dated August 6 and 20, 2018, and copies of Dr. Negrin's reports previously of record.

By decision dated September 7, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant review of its June 20, 2018 decision.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), 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.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> 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.<sup>8</sup>

## 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).

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. The underlying issue on appeal was whether the medical evidence of record established total disability from work for the claimed periods. Appellant submitted copies of Dr. Negrin's reports previously of record. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case.<sup>9</sup> Consequently, 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).

In support of her reconsideration request, appellant also submitted physical therapy treatment notes dated January to April 2017, a September 26, 2017 anesthesia record, a July 12, 2018 imaging study, reports from Dr. Negrin dated August 6 and 20, 2018, and a direct deposit form. These documents do not address the periods of disability at issue in the underlying merit

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<sup>5</sup> 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a).

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

<sup>8</sup> *Id.* at § 10.608(b); *H.H.*, *supra* note 5; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *see L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Candace A. Karkoff*, 56 ECAB 622 (2005).

decision. They are therefore irrelevant to the claim and insufficient to warrant further merit review.<sup>10</sup>

Appellant also provided July 9, 2018 reports by Dr. Negrin in which he noted that appellant had right elbow problems from June 10 through July 7, 2017 and other unspecified periods. As Dr. Negrin failed to address whether the accepted conditions had disabled appellant from work for the claimed periods, these reports are irrelevant to the underlying merit issue on reconsideration. The Board notes that the submission of evidence that does not address the particular merit issue involved does not constitute a basis for reopening a case.<sup>11</sup>

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Consequently, she is not entitled to a review of the merits of her claim based on the third above-noted requirements under section 10.606(b)(3). 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.<sup>12</sup>

### **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).

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<sup>10</sup> See *F.B.*, Docket No. 18-1039 (issued December 6, 2018).

<sup>11</sup> *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Alan G. Williams*, 52 ECAB 180 (2000); *Jaqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> *J.B.*, *supra* note 9; *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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