

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

B.C., Appellant)	
)	
and)	Docket No. 19-0302
)	Issued: July 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Blacksburg, SC, Employer)	
)	

Appearances:
Appellant, pro se
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 19, 2018 appellant filed a timely appeal from a September 28, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated April 19, 2018, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 28, 2018 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.*

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 November 3, 2017 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 1, 2017 she injured her left shoulder when reaching for mail while in the performance of duty. She did not stop work.

In a work excuse form dated November 7, 2017, Ryan Hollifield, a physician assistant, noted that appellant was examined that day, and that she could immediately return to work without restrictions.

On November 9, 2017 OWCP received an illegible duty status report (Form CA-17) dated November 7, 2017.

In a development letter dated November 14, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It provided a factual questionnaire for her completion and requested medical evidence in support of her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In a supplemental statement dated November 28, 2017, appellant noted that, when she was delivering mail on November 1, 2017, she reached to her left and felt a pop in her left shoulder. She indicated that she had previously undergone surgery on the same shoulder in April 2016 from a June 2015 injury.

By decision dated December 12, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted employment incident. It concluded that the requirements had not been met to establish an injury as defined by FECA.

In a work status report dated December 5, 2017, Dr. Patrick L. Hayes, an orthopedic surgeon, indicated that appellant could return to work on December 5, 2017 with restrictions.

On December 14, 2017 OWCP received another illegible Form CA-17.

On January 23, 2018 appellant requested reconsideration of OWCP's December 12, 2017 decision.

In a work status form dated January 16, 2018, Dr. Hayes indicated that appellant could not perform lifting greater than 20 pounds, and that she could not perform prolonged reaching overhead or extreme positions of the neck.

On January 24, 2018 OWCP received an illegible Form CA-17 report.

By decision dated April 19, 2018, OWCP denied modification of its December 12, 2017 decision.

On September 14, 2018 appellant requested reconsideration of OWCP's April 19, 2018 decision. She noted on the form that a diagnosis was enclosed; however, OWCP did not receive any additional evidence along with her request.

By decision dated September 28, 2018, OWCP denied merit review of its April 19, 2018 decision, finding that appellant neither raised substantive legal questions nor included new and relevant evidence in her request for reconsideration.

LEGAL PRECEDENT

Section 8128 (a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ 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.⁵

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.⁶ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's request for reconsideration must be received within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, 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).

³ This section provides in pertinent part: the 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).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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). Chapter 2.1602.4b.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, she 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).

Appellant did not submit any additional evidence along with her September 14, 2018 request for reconsideration. Although she indicated that she was enclosing documentation of a medical diagnosis, no further evidence was received. Because appellant failed to submit relevant and pertinent new evidence not previously considered by OWCP, she is not entitled to a review of the merits of her claim based on the third above-noted requirement 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.⁹

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).

⁹ 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).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 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