

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

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T.B., Appellant)	
)	
and)	Docket No. 19-0029
)	Issued: June 21, 2019
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Cincinnati, OH, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2018 appellant filed a timely appeal from a September 20, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a June 6, 2018 decision of the Board, which became final 30 days after issuance and is not subject to further review.¹ As there was no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

¹ 20 C.F.R. § 501.6(d); *see P.S.*, Docket No. 18-0718 (issued October 26, 2018); *T.B.*, Docket No. 15-0001 (issued July 1, 2015); *C.M.*, Docket No. 15-0471 (issued April 27, 2015); *D.A.*, Docket No. 08-1217 (issued October 6, 2008).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. 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

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

On November 15, 1995 appellant, then a 38-year-old modified mail processor, filed an occupational disease claim (Form CA-2) alleging that, on November 6, 1995, she experienced discomfort in both hands and her right shoulder due to repetitive motions required while casing mail. At that time, she had an accepted claim for aggravation of chondromalacia of the right knee in OWCP File No. xxxxxx731, and she was working in a modified sedentary position. Appellant stopped work on November 9, 1995. On November 13, 1996 OWCP accepted her claim for bilateral sprain/strain of both hands and wrists and right shoulder. It paid appellant wage-loss compensation benefits through November 17, 1999. However, on November 18, 1999 OWCP terminated her wage-loss compensation as she failed to accept an offer of suitable employment.⁵

On June 10, 2016 appellant filed a claim for compensation (Form CA-7) for the period April 19, 1997 to June 9, 2016. By decision dated August 23, 2016, OWCP denied her claim for wage-loss compensation for the claimed period. By decision dated June 29, 2017, an OWCP hearing representative affirmed OWCP's decision. She determined that the evidence of record was insufficient to establish causal relationship between the claimed period of disability and the accepted work injury.

Appellant appealed to the Board on August 14, 2017. By decision dated June 6, 2018, the Board affirmed OWCP's June 29, 2017 decision finding that appellant had not met her burden of proof to establish that she was disabled for the period August 19, 1997 to June 9, 2016, causally related to the accepted November 6, 1995 employment injury.⁶ The Board noted that OWCP terminated appellant's wage-loss compensation benefits on November 18, 1999, because she refused suitable employment.

Appellant requested reconsideration on July 3, 2018. She indicated that she wished to change her treating physician to Dr. Lawrence Harvey, an internal medicine specialist. Appellant detailed her history of complaints of severe pain in her hands and right shoulder dating back to

⁴ Docket No. 17-1761 (issued June 6, 2018).

⁵ Appellant's requests that OWCP reconsider the termination were denied. She filed multiple appeals to the Board and, by decisions dated December 3, 2003, Docket No. 03-1651 (issued December 3, 2003) and October 2, 2012, Docket No. 12-0471 (issued October 2, 2012) the Board affirmed the denial of appellant's reconsideration requests as they were untimely filed and failed to demonstrate clear evidence of error. Appellant's last request for reconsideration regarding the suitable work termination was denied by OWCP on April 23, 2015.

⁶ *Id.*

1995 and noted that she worked until April 1997, when she could no longer move her hands. She also argued that the employing establishment provided her with offers to return to work based upon inaccurate and incomplete medical reports. Appellant argued that OWCP committed error, that her physicians provided detailed medical reports, and attributed her injuries to work at the employing establishment.

In a report dated September 17, 2003, Dr. Jennifer Cavitt, a Board-certified clinical neurophysiologist, noted appellant's history of injury and treatment and advised that her conditions began in 1995 while working at the employing establishment. She indicated that appellant had a history of right carpal tunnel syndrome which may be contributing to some of appellant's symptoms in the wrist and hand. Dr. Cavitt recommended additional testing and surgery, which appellant declined.

In a report dated June 8, 2018, Dr. Harvey noted that he was treating appellant for numerous conditions to include: hypertension, congestive heart failure, chronic kidney disease, sarcoidosis, polymyalgiarheumatic, osteoarthritis, spondylosis, lumbar radiculopathy, anxiety disorder, and acid reflux disease.

OWCP received previously submitted reports including a November 17, 1995 report from Dr. David H. Gillis, specializing in orthopedic surgery; reports from Dr. Errol Stern, a Board-certified orthopedic surgeon, dated October 1 and November 4, 1997, referring to a work-related injury on April 19, 1997, and indicating that appellant could perform some type of modified work; an October 31, 1997 magnetic resonance imaging (MRI) scan of the left shoulder; a July 15, 1997 duty status report (Form CA-17); a June 2, 1998 report from Dr. Daniel G. Reilly, a Board-certified orthopedic hand surgeon; reports dated March 3, 2006, April 21, 2008, December 14, 2012, and September 14, 2016, from Dr. Michael Pordy, a Board-certified internist, who opined that appellant was disabled and unable to return to work; a July 25, 2013 electrodiagnostic nerve conduction study; and records which predated the November 6, 1995 work injury.

By decision dated September 20, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that her reconsideration request did not raise a substantive legal error or argument, the medical evidence was irrelevant to the matter at hand and repetitious, and that she did not submit new and relevant evidence.⁷

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁸ OWCP has discretionary authority in this regard and has imposed certain

⁷ The Board notes that OWCP is not authorized to review Board decisions. Board decisions are not subject to review except by the Board and they become final after 30 days. Although the June 6, 2018 Board decision was the last merit decision of record, OWCP's June 29, 2017 merit decision is the appropriate subject of possible modification by OWCP. See 20 C.F.R. § 501.6(d).

⁸ 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).

limitations in exercising its authority.⁹ 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.¹⁰ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.¹¹ 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.¹²

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹³ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.¹⁴ When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a claim.¹⁷

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).

⁹ 20 C.F.R. § 10.607.

¹⁰ *Id.* at § 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.

¹¹ *Id.* at § 10.606(b)(3).

¹² *Id.*

¹³ *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

¹⁴ *C.F.*, Docket No. 18-0360 (issued July 19, 2018); *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁵ *C.F.*, *id.*; *Annette Louise*, 54 ECAB 783 (2003).

¹⁶ *See L.R.*, Docket No. 18-0400 (issued August 24, 2018).

¹⁷ *See M.E.*, Docket No. 18-0553 (issued November 5, 2018); *S.T.*, Docket No. 17-0790 (issued May 22, 2018); *M.E.*, 58 ECAB 694 (2007).

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in the June 6, 2018 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.¹⁸

The Board notes that the underlying issue in this case is whether appellant met her burden of proof to establish disability from August 19, 1997 until November 18, 1999.

In her June 18, 2018 request for reconsideration, appellant requested a change of treating physician, discussed her history of injury, and argued that her work contributed to her condition and her offers to return to work were based upon inaccurate and incomplete medical reports. She also argued that her physicians provided detailed medical reports and that OWCP committed error. Appellant's previously submitted arguments on reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. The arguments are irrelevant to the medical issue of whether appellant was disabled during the period April 18, 1997 until her benefits were terminated on November 18, 1999 for refusal of suitable work¹⁹. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has failed to submit relevant and pertinent new evidence in support of reconsideration.

The new evidence includes records which predated the November 6, 1995 work injury, a September 17, 2003 report from Dr. Cavitt, who noted that appellant had a history of right carpal tunnel syndrome which may be contributing to some of appellant's symptoms in the wrist and hand, and a June 8, 2018 report from Dr. Harvey, who noted that he was treating appellant for numerous nonwork-related conditions. The new evidence is irrelevant because neither physician offered an opinion that appellant was disabled during the period April 18, 1997 to November 18, 1999 causally related to her accepted November 6, 1995 employment injury. Evidence that fails to address the underlying issue on reconsideration is insufficient to warrant further merit review.²⁰

OWCP also received copies of previously submitted reports and documents addressed and evaluated by OWCP and the Board. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²¹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted

¹⁸ *J.L.*, Docket No. 17-1460 (issued December 21, 2018).

¹⁹ *Supra* note 17.

²⁰ *Id.*

²¹ *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984)

a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered.

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 September 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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