

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

C.C., Appellant)

and)

DEPARTMENT OF COMMERCE, OFFICE OF)
THE SECRETARY, Washington, DC, Employer)

**Docket No. 18-0316
Issued: March 14, 2019**

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 November 29, 2017 appellant filed a timely appeal from a June 15, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated November 10, 2016, 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 Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated November 19, 2018, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0316 (issued November 19, 2018).

FACTUAL HISTORY

On June 13, 2008 appellant, then a 43-year-old lawyer/senior counsel, filed an occupational disease claim (Form CA-2) alleging an injury causally related to her federal employment. She noted that she first became aware of her claimed condition and realized its relation to her federal employment on May 13, 2008. By decision dated June 3, 2013, OWCP accepted the claim for hypertension. However, OWCP on its own motion rescinded its acceptance of appellant's claim for hypertension, finalized by decision dated October 9, 2014.

Appellant requested reconsideration of the rescission decision on September 29, 2015.

By decision dated November 10, 2016,³ OWCP denied modification of its prior decision, finding that the factual evidence of record was insufficient to establish a compensable work factor. It also found that appellant failed to establish that any of her alleged employment incidents had occurred as alleged.

On June 6, 2017 appellant requested reconsideration and submitted an April 4, 2017 narrative statement arguing that she was entitled to reconsideration due to examiner error in applying Board precedent and due to new information. She attached a letter from her Congressional representative, dated March 27, 2017, in support of her request for reconsideration, confirming, among other facts, the following: (1) she had opened an inquiry on behalf of appellant, her constituent; (2) she had referred the case to the U.S. House of Representatives' Committee on Oversight which opened a case regarding the circumstances of her termination from the employing establishment, which remained pending; (3) the employing establishment had not responded to the Congressional inquiry despite "a strict timeline and numerous forms of documentation" from appellant; and (3) appellant's professional licenses, degrees, and other professional property were taken in 2009 and not returned for almost six years.

By decision dated June 15, 2017, OWCP denied appellant's request for reconsideration without conducting a merit review.

³ This decision superseded a previous OWCP decision dated November 9, 2016.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ 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.⁶

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.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 a 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).

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. Consequently, she is not entitled to further 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).

In support of her request for reconsideration, appellant submitted a statement where she asserted that she was entitled to reconsideration due to examiner error in applying ECAB precedent. The Board finds that appellant's argument was previously considered by OWCP in its November 10, 2016 decision and is irrelevant to the issue of whether or not the factual evidence of record was sufficient to establish a compensable factor of appellant's federal employment. Appellant also submitted a letter from her congressional representative confirming that among other things, a congressional inquiry into the matters surrounding appellant's illness in 2008 and termination from the Department of Commerce was opened on her behalf. The Board finds that

⁴ 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).

⁵ 20 C.F.R. § 10.607.

⁶ *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.

⁷ 20 C.F.R. § 10.606(b)(3).

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

this letter is legally irrelevant to the underlying issue of whether appellant's alleged employment incidents had occurred as alleged.

Appellant submitted no new evidence with her request for reconsideration. Accordingly, the Board finds that appellant has not provided OWCP with evidence which has met the third-noted requirement of 20 C.F.R. § 10.606(b)(3) sufficient to require further merit review of her claim.

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).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 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

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).