

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

_____	)	
<b>J.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0064</b>
	)	<b>Issued: May 10, 2019</b>
<b>DEPARTMENT OF AGRICULTURE, FOOD</b>	)	
<b>SAFETY INSPECTION SERVICES,</b>	)	
<b>Moroni, UT, Employer</b>	)	
_____	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 10, 2017 appellant filed a timely appeal from an August 28, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated February 21, 2017, to the filing of this current appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record, on appeal or provided the Board, includes evidence received after OWCP issued its August 28, 2017 decision. 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. 20 C.F.R. § 501.2(c)(1). Therefore, evidence not before OWCP at the time of the August 28, 2017 decision will not be considered by the Board 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 January 2, 2017 appellant, then a 45-year-old consumer safety inspector/food safety inspector (FSIS), filed an occupational disease claim (Form CA-2) alleging toxic exposure to chemicals. She explained that chemicals were used with little to no ventilation while in the performance of duty, and on December 29, 2016 a major chemical spill occurred at her job site. Appellant alleged that this chemical exposure caused her to have headaches, a raw throat, some days blistering on the back of her throat, heartburn, tightness in the chest, and a hoarse voice. She indicated that she first became aware of her claimed condition and its relation to her federal employment on June 1, 2015. Appellant did not stop work. On the reverse side of the claim form, D.M., a supervisor, responded that appellant attempted to see her primary care provider for breathing treatment, but was unable to schedule an appointment. D.M. noted that appellant took two days off work and that it became increasingly difficult for appellant to function around chemicals.

OWCP subsequently received a copy of appellant's position description, noting the job duties of a consumer safety inspector, as well as appellant's June 20, 2002 application for employment.

In a development letter dated January 19, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the requested evidence.

In a separate letter also dated January 19, 2017, OWCP requested that the employing establishment provide additional details regarding appellant's alleged chemical exposure.

OWCP subsequently received treatment notes from Revere Health dated January 16, 2014 and July 3, 2015 what were largely illegible. An unsigned note dated October 16, 2015, also from Revere Health, indicated that when appellant presented for examination she exhibited obvious distress from dyspnea and laryngitis. The health care provider noted that, upon entering the examination room, they smelled a "bleach type" odor and their throat became irritated. Each time they reentered that room, they smelled the same odor. The report noted a diagnosis of radiculopathy.

By decision dated February 21, 2017, OWCP denied appellant's claim, finding that appellant had not established that her exposure to chemicals occurred as alleged.

On August 18, 2017 appellant requested reconsideration and submitted a fact sheet for Peracetic acid and a checklist for identifying odor sources in the plant.

By decision dated August 28, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

## LEGAL PRECEDENT

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

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.<sup>6</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, it will deny the request for reconsideration without reopening the case for a review on the merits.<sup>7</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).

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 it. 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).<sup>8</sup>

In support of her request for reconsideration, appellant submitted a fact sheet for Peracetic acid and a checklist for identifying the odor sources in the plant. However, this is not factual information relevant to establish chemical exposure relative to appellant's claim. As such,

---

<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *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.

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(a), (b).

<sup>8</sup> *See supra* note 6 at § 10.606(b)(3)(i) and (ii).

appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>9</sup>

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>10</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2019  
Washington, DC

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

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

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

---

<sup>9</sup> *Id.* at § 10.606(b)(3)(iii).

<sup>10</sup> *Id.* at § 10.608; *see also 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).