

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

D.D., Appellant)	
)	
and)	Docket No. 19-0912
)	Issued: October 10, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2019 appellant filed a timely appeal from an October 16, 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 January 10, 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 to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² 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

On December 28, 2010 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she fell at work and fractured her 5th finger while in the performance of duty. She stopped work on that date and resumed work on December 31, 2010. On April 14, 2011 OWCP accepted appellant's claim for left 5th finger joint disorder, left mallet finger, and left hand, 5th finger closed fracture of the phalanx/phalanges.

Appellant's then-physician, Dr. Sandra Bender, an occupational medicine specialist, released appellant to resume regular-duty work as of July 21, 2011. Appellant was last treated on September 27, 2011 and on October 6, 2011 voluntarily ceased treatment with Dr. Bender. For approximately six years thereafter, there was no additional activity on the claim.

On September 21, 2017 appellant filed a notice of recurrence (Form CA-2a) which she alleged occurred commencing on December 28, 2010 at 2:30 a.m. She explained that her finger never completely healed, that it was disfigured (hump), and that her ongoing symptoms included aches/pain, tenderness, stiffness, and numbness.

In a September 28, 2017 statement, appellant recounted the circumstances of her original 2010 injury and reiterated that her left 5th finger had still not fully healed, as it was currently aching, numb, tender, and stiff. She noted that she would experience these symptoms on a permanent basis and engage in the treatments of medicine and massage for the rest of her life. Appellant related that her injured finger was permanently disfigured as it has a hump caused by improper healing.

In an October 18, 2017 development letter, OWCP advised appellant that additional evidence was required to support that her claimed recurrence was due to a worsening of the accepted work-related condition without intervening cause. It noted that she had not provided any new medical evidence and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A September 8, 2017 note from Dr. Mjaltaj Mariola, a family practitioner, indicated that appellant had been experiencing achiness, numbness, stiffness, and tenderness to touch in the left 5th finger since her fall on December 28, 2010. His clinical assessment was [p]ain of [the left 5th] finger of left hand."

A November 16, 2017 x-ray of appellant's left 5th finger revealed no acute fracture, subluxation, or dislocation. However, there was evidence of decreased joint space and marginal spurring along the 5th digit distal interphalangeal joint, which was likely degenerative in etiology. Lastly, visualized soft tissues were grossly normal.

A November 20, 2017 copy of OWCP's questionnaire signed by appellant recounted her current symptoms and disfigurement. In an accompanying narrative statement, appellant indicated

that her symptoms of stiffness, numbness, tenderness, and achiness have remained the same since the date of her accepted employment incident.

By decision dated January 10, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she required additional medical treatment due to a worsening of her accepted employment-related condition, without intervening cause. It noted that there was no detailed history of her finger condition since OWCP stopped receiving records of her medical treatment in 2011. OWCP also explained that, while a physician diagnosed appellant with pain, pain was a symptom and not a valid diagnosis.

On March 12, 2018 appellant requested reconsideration.

By decision dated March 21, 2018, OWCP denied appellant's reconsideration request, finding that it was insufficient to warrant further merit review.

On August 17, 2018 appellant again requested reconsideration.

In a June 25, 2018 letter, appellant indicated that she tried many times to get the physician she visited on February 23, 2018 to provide documentation about her diagnosis, but to no avail. She noted that when she talked to the billing department they notified her that her physician had billed them using a diagnosis code which represented primary osteoarthritis on the left hand.

By decision dated September 13, 2018, OWCP denied appellant's reconsideration request, finding that it was insufficient to warrant further merit review.

On September 17, 2018 appellant again requested reconsideration.

In support of her request, appellant submitted an August 28, 2018 letter from her health insurance company which indicated that her physician had billed it for the diagnosis of primary osteoarthritis of the left hand.

By decision dated October 16, 2018, OWCP denied appellant's request for reconsideration, finding that it neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

³ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 September 17, 2018 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered.⁸ Consequently, she is not entitled to 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).

Furthermore, appellant failed to submit relevant and pertinent new evidence in support of her request for reconsideration.⁹ She submitted an August 28, 2018 letter from her health insurance company indicating that her physician had billed the company for the diagnosis of primary osteoarthritis of the left hand. However, this does not constitute relevant and pertinent new evidence, as it is not medical evidence.

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.

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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 *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *A.W.*, Docket No. 19-0327 (issued July 19, 2019).

⁹ *Id.*

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 October 16, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 10, 2019
Washington, DC

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

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

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