

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

R.A., Appellant)
and) Docket No. 19-0821
U.S. POSTAL SERVICE, POST OFFICE,) Issued: September 12, 2019
Indianapolis, IN, Employer)

)

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 March 7, 2019 appellant filed a timely appeal from a September 13, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has 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 The Board notes that, following the September 13, 2018 decision, OWCP received additional evidence. The Board also received 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.*

FACTUAL HISTORY

On December 28, 2017 appellant, then a 56-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging swelling and pain in her left knee, as well as pain in her lower back and hip caused by putting more weight on her left side due to factors of her federal employment. She related that she placed more weight on her left side to alleviate the pain she was experiencing in her right knee. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on December 18, 2017. In a narrative statement of even date, she attributed her pain to standing and casing mail, walking for long periods of time, and twisting and turning for up to four hours a day. Appellant did not stop work.

In a development letter dated January 17, 2018, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

By decision dated February 26, 2018, OWCP denied appellant's occupational disease claim finding that she had not submitted medical evidence containing a medical diagnosis in connection with her injuries.

On March 21, 2018 OWCP received a February 21, 2018 letter from Dr. Nilda Durany, Board-certified in family medicine. Dr. Durany noted spasms, tenderness, pain, and edema of appellant's lumbar spine as well as pain and limited range of motion in her left hip, knee and ankle. Based on x-rays taken on January 25, 2018 she diagnosed lumbosacral disc degeneration, other spondylosis with radiculopathy of the lumbar region, unilateral primary osteoarthritis of the left hip, lumbar radiculopathy, as well as sprains of the left knee and left ankle. Dr. Durany opined that appellant's lumbosacral disc degeneration, lumbar osteoarthritis, and left hip osteoarthritis were caused by her repetitive bending, rotating and twisting her lumbar spine every day for 32 years to case mail while working for the employing establishment. She also noted that appellant's lumbosacral disc degeneration and lumbar osteoarthritis were exacerbated and permanently aggravated on December 18, 2017 causing her lower back and left hip pain and radiculopathy radiating down her left leg into her left foot.

On April 4, 2018 appellant sought treatment with Dr. Casimir Starsiak, a Board-certified orthopedic surgeon. Dr. Starsiak noted swelling in her leg and indicated that x-rays of her right knee revealed severe patellofemoral arthritis and severe medical compartment narrowing with lateral compartment arthritis. He diagnosed right knee arthritis and recommended a total knee arthroplasty.

On May 17, 2018 appellant requested reconsideration utilizing the appeal request form accompanying OWCP's February 26, 2018 decision.

By decision dated August 15, 2018, OWCP modified its prior decision finding that the medical evidence of record established diagnosed conditions. However, the claim remained denied because the medical evidence was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted employment duties.

On August 28, 2018 appellant again requested reconsideration. In support of her request for reconsideration she explained in a statement dated August 23, 2018 that she was submitting additional information to address some of the questions raised as well as providing some information she believed was already of record, but not referenced in the prior decisions. Appellant noted that she had been employed by the employing establishment for over 32 years and the repetitive motions of twisting, turning, bending, and stooping had exacerbated and permanently aggravated the osteoarthritis in her knee, hip, and lower back, as well as spinal disc degeneration.

By decision dated September 13, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (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.³

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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 reconsideration request 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. Accordingly, 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).

Furthermore, appellant failed to submit any new evidence in support of her request for reconsideration, rather she referenced medical evidence already of record. Therefore, OWCP was not required to reopen her claim for reconsideration of the merits in accordance with the third

³ 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *H.H.*, *supra* note 3; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

above-noted requirement under section 10.606(b)(3).⁷ Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.⁸

CONCLUSION

The Board finds that OWCP properly denied her 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 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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

⁷ C.R., Docket No. 18-1569 (issued March 7, 2019); R.L., Docket No. 18-0175 (issued September 5, 2018).

⁸ C.C., Docket No. 18-0316 (issued March 14, 2019); M.E., 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).