

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

_____)	
K.E., Appellant)	
)	
and)	Docket No. 20-0664
)	Issued: April 21, 2020
U.S. POSTAL SERVICE, POST OFFICE, Burlington, WI, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 3, 2020 appellant, through counsel, filed a timely appeal from a January 7, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision on the relevant issue, dated October 19, 2018, to 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 over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 14, 2017 appellant, then a 27-year-old city carrier assistant 2, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2017 she sustained a left knee sprain when she fell on ice while in the performance of duty.

OWCP received medical evidence, including medical reports dated December 14, 18, 19, and 29, 2017 from Dr. Leena H. Almarzouqi, an attending physician Board-certified in occupational and preventive medicine. Dr. Almarzouqi noted a history of injury that on December 12, 2017 appellant fell on ice and injured her left knee. She diagnosed contusion of the left knee, initial encounter. Dr. Almarzouqi opined that the diagnosed condition was work related and released appellant to return to work with restrictions. On January 12 and 26, 2018 she released appellant to full-duty work without restrictions.

By decision dated February 16, 2018, OWCP accepted that the December 13, 2017 employment incident occurred, as alleged, but denied appellant's claim finding that the medical evidence of record did not contain a rationalized medical opinion, based on an accurate factual background, relating her diagnosed condition to the accepted employment incident. Therefore, the requirements had not been met to establish an injury or medical condition causally related to the accepted December 13, 2017 employment incident. It noted that Dr. Almarzouqi reported the date of injury as December 12, 2017 rather than December 13, 2017.

On February 20, 2018 the employing establishment informed OWCP that appellant returned to full-time full-duty work on January 14, 2018 and that her employment was terminated during her probationary period effective February 12, 2018.

On March 1, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the February 16, 2018 decision.

OWCP thereafter received additional reports dated February 15, 2018 from Dr. Almarzouqi who continued to diagnose contusion of the left knee, initial encounter, and provide appellant's work restrictions. Dr. Almarzouqi also diagnosed iliotibial (IT) band syndrome of the left lower leg. She opined that the diagnosed conditions were work related.

During the August 16, 2018 telephonic hearing, appellant testified that her actual date of injury was December 12, 2017.

By decision dated October 19, 2018, an OWCP hearing representative reversed in part and affirmed in part the February 16, 2018 decision. He corrected the date of injury to December 12, 2017 based on the evidence of record. The hearing representative found that Dr. Almarzouqi's reports were sufficient to accept the diagnosis of left knee contusion as causally related to the December 12, 2017 employment incident. Upon return of the case record, he directed OWCP to accept left knee contusion. However, the hearing representative further found that

Dr. Almarzouqi's reports were insufficient to establish an employment-related diagnosis of IT band syndrome as she failed to provide medical rationale explaining how the diagnosed condition was causally related to appellant's accepted work injury.

In a letter dated October 29, 2018, OWCP accepted appellant's claim for left knee contusion.³

By decision dated April 10, 2019, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity (knee) pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.⁴ The award ran for 5.76 weeks, plus a partial day, from December 21, 2018 to January 30, 2019 and was based on a December 21, 2018 impairment evaluation of Dr. Neil Allen, Board-certified in internal medicine and neurology, and a February 12, 2019 impairment evaluation of an OWCP district medical adviser.

On September 10, 2019 appellant, through counsel, requested reconsideration of OWCP's hearing representative's October 19, 2018 decision. Counsel submitted a copy of Dr. Allen's December 21, 2018 impairment evaluation report.⁵ He indicated that a January 9, 2019 report from Dr. Allen also accompanied appellant's reconsideration request.

OWCP, by decision dated January 7, 2020, denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ 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.⁸

³ By decision dated January 24, 2019, OWCP denied appellant's wage-loss compensation claim (Form CA-7) for the period February 9, 2018 and continuing finding that the medical evidence of record was insufficient to establish that she was totally disabled causally related to her accepted December 12, 2017 employment injury. In a July 9, 2019 decision, a hearing representative affirmed the January 24, 2019 decision.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ The date of the examination was December 21, 2018, but the report based upon the examination was signed on January 9, 2019.

⁶ 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).

⁷ 20 C.F.R. § 10.607.

⁸ *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. *Id.* at Chapter 2.1602.4b (February 2016).

A timely request 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.⁹ When a timely request 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.¹⁰

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).

On September 10, 2019 appellant, through counsel, timely requested reconsideration of OWCP's October 19, 2018 merit decision. However, counsel neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law nor did he advance a relevant legal argument not previously considered by OWCP.¹¹ Accordingly, the Board finds that appellant is not entitled to a 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).¹²

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered relative to the underlying issue of whether she has submitted sufficient medical evidence to establish that the acceptance of her claim should be expanded to include the additional condition of IT band syndrome of the left lower leg as causally related to her accepted December 12, 2017 employment injury. With her reconsideration request, appellant resubmitted Dr. Allen's December 21, 2018 impairment evaluation, which found that she had two percent permanent impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. This evidence, however, was previously of record and considered by OWCP in its earlier April 10, 2019 merit schedule award decision. In addition, this evidence failed to address the underlying issue of causal relationship between appellant's left lower leg condition and the accepted employment injury. Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³ Moreover, the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹⁴ For these reasons, appellant is not

⁹ *Id.* at § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(a), (b).

¹¹ *N.O.*, Docket No. 19-1481 (issued January 16, 2020).

¹² *Id.*

¹³ *M.C.*, Docket No. 19-1063 (issued October 7, 2019).

¹⁴ *See S.C.*, Docket No. 18-0814 (issued January 18, 2019); *David J. McDonald*, 50 ECAB 185 (1998).

entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(3).¹⁵

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.

On appeal counsel contends that OWCP's January 7, 2020 decision is contrary to fact and law. As stated above, the evidence appellant submitted on reconsideration has not met the requirements to reopen her case for a review of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

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 January 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ 20 C.F.R. § 10.606(b)(3)(iii); *see T.H.*, Docket No. 18-1809 (issued May 23, 2019); *Johnny L. Wilson*, Docket No. 98-2536 (issued February 13, 2001).