

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

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**P.M., Appellant**

**and**

**DEPARTMENT OF THE NAVY, MILITARY  
SEALIFT COMMAND, Norfolk, VA, Employer**

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**Docket No. 19-1253  
Issued: January 23, 2020**

*Appearances:*

*Sara Kincaid, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On May 15, 2019 appellant, through counsel, filed a timely appeal from a December 10, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated August 22, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 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 May 23, 2017 appellant, then a 61-year-old steward utility worker, filed an occupational disease claim (Form CA-2) alleging that on May 22, 2014 she first realized that her lower abdomen, groin, and left hip conditions had been caused or aggravated by her repetitive manual labor activities including heavy lifting and pushing/pulling while in the performance of duty. Appellant's supervisor indicated that appellant had been on disability retirement since June 17, 2015. In an accompanying statement, appellant detailed her work activities which included basic food handling, sanitation, preparation, housekeeping, janitorial, cleaning, and service functions. She indicated that these activities required constant heavy lifting, pushing/pulling, and carrying. Appellant alleged that over the past 10 years she kept reinjuring her left hip, abdomen, and groin, which caused a neurogenic bladder, osteitis pubis, left trochanteric bursitis, and pudendal nerve entrapment, from performing these repetitive duties.

In a development letter dated June 2, 2017, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It provided a questionnaire for her completion regarding the factual elements of her claim. OWCP also requested that appellant provide a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence.

In a statement dated June 18 2017, appellant responded to OWCP's development questionnaire and provided additional information regarding her employment duties.

In a March 20, 2017 report, Dr. Leila Rhodes, a physician specializing in internal medicine, summarized appellant's employment duties, noting that she had worked for the employing establishment for 10 years and had medically retired on September 1, 2015. She provided examination findings, reviewed objective testing, and diagnosed osteitis pubis, urge incontinence, pudendal nerve entrapment, urinary frequency, left trochanteric bursitis, and neurogenic bladder. Dr. Rhodes attributed the diagnosed conditions to appellant's employment duties. She explained that appellant originally sustained work injuries on June 22, 2012 and that these work injuries had been aggravated by her repetitive employment duties, which included heavy lifting, pushing/pulling, and carrying.

In a report dated June 15, 2017, OWCP's second opinion physician, Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, related that appellant had an accepted claim under OWCP File No. xxxxxx654 for a May 3, 2013 injury which was accepted for left hip and thigh sprain. Dr. Einbund provided a summary of appellant's medical history and opined that appellant's accepted conditions in File No. xxxxxx654 had resolved. He also noted that while appellant had been diagnosed by a treating physician with osteitis pubis, trochanteric bursitis, and

adductor tendinitis, these conditions were not related to her May 2013 traumatic injury, but were underlying in nature and had developed over time.<sup>3</sup>

By decision dated August 22, 2017, OWCP denied the claim because the medical evidence submitted was insufficient to establish causal relationship between the accepted employment factors and her diagnosed conditions.

On August 21, 2018 counsel requested reconsideration.

In a July 9, 2018 report, Dr. Rhodes reported that appellant had increased pain and decreased left hip range of motion. She diagnosed osteitis pubis based on objective MRI scan findings, which she attributed to appellant's employment duties. Dr. Rhodes discussed the relationship between the diagnosed osteitis pubis, left hip trochanteric bursitis, pain, neurogenic bladder, and pudendal nerve entrapment and appellant's strenuous job activities. Regarding the diagnosis of osteitis pubis, she explained that this condition was due to tissue damage and inflammation of the public symphysis, which was cartilage at the point where several muscles from the abdomen and groin attached and contracted during physical activity. She explained that the condition was caused by repetitive contraction of the muscles that attached to the pubic bone and pub symphysis, and excessive force on the public symphysis which caused an inflammatory response. Dr. Rhodes further, opined that appellant's job duties required her to constantly lift heavy weights, carry and push/pull which caused multiple aggravating motions, and caused the muscles that attached to the pubic bone and pubic symphysis to repetitively contract. This resulted in repetitive micro trauma to appellant's hip and groin areas that over time caused the diagnosed condition. Regarding the diagnosed condition of trochanteric bursitis of the left hip, Dr. Rhodes explained that appellant's performance of constant heavy lifting and walking duties caused repetitive soft tissue damage within the hip and pelvic areas that led to continued inflammation of the bursa, and then caused bursitis to develop. Regarding appellant's diagnosis of pudendal nerve entrapment, Dr. Rhodes explained that this condition resulted from continued inflammation of the osteitis pubis, caused by continued performance of appellant's employment duties, which resulted in repetitive microtrauma to the osteitis pubis and subsequent inflammation. Regarding appellant's diagnosed condition of neurogenic bladder, Dr. Rhodes explained that this condition occurred when the nerves that governed the urinary tract were damaged and were not able to tighten or relax. This nerve damage was caused by appellant's osteitis pubis and subsequent development of pudendal nerve entrapment. Thus, Dr. Rhodes concluded that appellant's injury began on June 22, 2012, that the condition had not fully resolved when she returned to work on January 7, 2013, and that her condition had been aggravated by her employment duties.

By decision dated December 10, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

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<sup>3</sup> The Board notes that OWCP File No. xxxxxx654 has not been combined with the current claim.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</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>6</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>7</sup>

A timely application 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.<sup>8</sup> When a timely application 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.<sup>9</sup>

## ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Counsel requested reconsideration, summarized the medical evidence of record, and concluded that causal relationship had been established. The underlying issue on appeal was whether appellant's diagnosed conditions were caused or aggravated by factors of her employment. This is a medical issue which must be determined by rationalized medical evidence.<sup>10</sup> Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits based on the

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *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 2.1602.4(b).

<sup>7</sup> *C.H.*, Docket No. 19-0669 (issued October 9, 2019); *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>8</sup> 20 C.F.R. § 10.606(b)(3); *see C.H., id.*; *T.M.*, Docket No. 19-0535 (issued July 25, 2019); *J.B.*, Docket No. 18-1531 (issued April 11, 2019).

<sup>9</sup> *Id.* at 10.608.

<sup>10</sup> *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3). Appellant did, however, submit relevant and pertinent new evidence not previously considered.<sup>11</sup>

In support of her request for reconsideration, appellant submitted a new medical report from Dr. Rhodes. In her report dated July 9, 2018, although similar to her previous March 20, 2017 report, Dr. Rhodes provided additional rationale explaining the mechanism by which the diagnosed conditions had been caused or aggravated by appellant's employment duties. Dr. Rhodes' new report directly addressed the basis upon which OWCP denied appellant's claim as it provided additional explanation as to the cause of the diagnosed conditions and discussed the relationship to appellant's federal employment.<sup>12</sup>

The Board thus finds that OWCP improperly refused to reopen appellant's case for further review of the merits, as the evidence she submitted, in support of her reconsideration request, is relevant and pertinent new evidence not previously considered.<sup>13</sup> Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge his or her burden of proof.<sup>14</sup>

As appellant has submitted relevant and pertinent new evidence not previously considered by OWCP, she is entitled to a review of the merits of her claim under section 10.606(b)(3) of OWCP's regulations.<sup>15</sup> The case will be remanded to OWCP to conduct a merit review of the claim. Following this and such other development as deemed necessary, it shall issue an appropriate merit decision on the claim.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>11</sup> *R.T.*, Docket No. 18-1263 (issued February 7, 2019); *K.S.*, Docket No. 18-1022 (issued October 24, 2018).

<sup>12</sup> *Id.*; *M.C.*, Docket No. 17-1983 (issued August 17, 2018).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 10, 2018 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 23, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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