

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

S.W., Appellant)	
)	
and)	Docket No. 19-1498
)	Issued: January 9, 2020
U.S. POSTAL SERVICE, POST OFFICE, Morrilton, AR, Employer)	
)	

Appearances:
Hilary Rippenkroeger, Esq., for the appellant¹
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 July 3, 2019 appellant, through counsel, filed a timely appeal from a February 1, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 13, 2017, 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 to review 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 March 17, 2017 appellant, then a 52-year-old regular rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on the same date, she sustained injury when her postal vehicle ran into a light pole on the side of the road when she was delivering mail while in the performance of duty. OWCP accepted her claim for left shoulder and left elbow contusions.

Appellant stopped work on April 29, 2017 and later filed a claim for wage-loss compensation benefits (Form CA-7) for the period April 29 through September 1, 2017.

In support of her claim for wage-loss compensation benefits, appellant submitted several medical reports including a March 20, 2017 report from Dr. Peter J. Post, a Board-certified family practitioner, who noted that she reported running off the road at work on March 17, 2017 and hitting a light pole. Dr. Post detailed physical examination findings and diagnosed contusions of the left shoulder and left elbow, and of an "unspecified knee." He opined that appellant could return to work on March 25, 2017. In an April 13, 2017 report, Dr. Post diagnosed left knee pain and noted that he was referring appellant for an orthopedic evaluation.

Appellant submitted other reports from this period, including April 25 and May 16, 2017 reports from Dr. Grant W. Bennett, a Board-certified orthopedic surgeon. Dr. Bennett detailed appellant's reporting of the March 17, 2017 accident and diagnosed left knee contusion, fibromyalgia, lumbago, bilateral lower extremity radiculopathy, and possible lumbar facet arthropathy. Appellant also submitted a number of diagnostic testing reports and follow-up treatment reports from Dr. Bennett which primarily concerned her back and lower extremities.

By decision dated December 13, 2017, OWCP denied appellant's claim finding that she had not submitted sufficient medical evidence to establish entitlement to wage-loss compensation benefits for the period April 29 through September 1, 2017.

On May 16, 2018 appellant, through counsel, requested reconsideration of the December 13, 2017 decision. In support of this request, appellant submitted reports from her emergency room visit on March 17, 2017.

By decision dated August 1, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On December 12, 2018 appellant, through counsel, again requested reconsideration. Appellant submitted an October 24, 2017 report from Dr. Bennett who noted that she presented for a follow-up examination relating to her complaints of left knee and lower back pain.³

³ Dr. Bennett listed a date of injury/onset for the knee as March 17, 2017 and a date of injury/onset for the lower back as an unspecified date in April 2017.

Dr. Bennett indicated that, upon physical examination, appellant's affect was abnormal with subjective testing changes and that she had full range of motion of her left knee. He diagnosed chronic lumbago with radiculopathy, fibromyalgia, and left knee pain.

In a March 21, 2018 report, Dr. Bennett indicated that appellant returned for a follow-up examination of her left knee. He provided the same diagnoses listed in his October 24, 2017 report and added the diagnosis psychological abnormalities. Dr. Bennett advised that appellant's pain would not prevent her from working, including engaging in mail delivery.

Appellant also resubmitted March 20 and April 13, 2017 reports from Dr. Post.

By decision dated February 1, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.⁴

A claimant seeking reconsideration of a final decision must present arguments or provide evidence which: (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.⁵ If OWCP determines that at least one of these requirements is met, 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

To be timely, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ Timeliness is determined by the document "received date" as recorded in the iIntegrated Federal Employees' Compensation System (iFECS).⁹ If the last day of the one-year time period is a Saturday, Sunday, or a legal

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁷ *Id.* at § 10.608(b); *L.S.*, Docket No. 18-0858 (issued November 19, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ 20 C.F.R. § 10.607(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

holiday, OWCP will still consider a request to be timely filed if it is received on the next business day.¹⁰

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹¹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

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 filed a timely request for reconsideration on December 12, 2018,¹³ but she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).¹⁴

In support of her request for reconsideration, appellant submitted October 24, 2017 and March 21, 2018 reports from Dr. Bennett who noted appellant's complaints of left knee and back pain. The reports do not contain an opinion that she had disability causally related to an employment-related injury. While this medical evidence submitted by appellant was new, it was not relevant because it did not directly address the underlying issue of the present case, *i.e.*, whether she had disability for the period April 29 through September 1, 2017 causally related to her March 17, 2017 employment injury. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁵

Appellant also submitted March 20 and April 13, 2017 reports from Dr. Post which had previously been submitted and considered by OWCP. However, the submission of this evidence does not require reopening of appellant's case for review on the merits as the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁶

¹⁰ *Id.* See also *M.A.*, Docket No. 13-1783 (issued January 2, 2014).

¹¹ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹² *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹³ See *supra* note 8; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁴ See *supra* note 5.

¹⁵ See *supra* note 12.

¹⁶ See *supra* note 11.

Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁷

On appeal counsel argues that the evidence appellant submitted upon reconsideration required reopening of her claim for review on the merits. However, the Board has explained that the submitted evidence was insufficient to require such reopening of her claim given its failure to meet the requirements of 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). OWCP properly denied merit review.¹⁸

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 February 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2020
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

¹⁷ See *supra* note 5.

¹⁸ See *supra* notes 5 through 7.