

United States Department of Labor  
Employees' Compensation Appeals Board

---

Z.B., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Kingwood, TX, Employer )

---

Docket No. 19-0253  
Issued: May 15, 2020

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 29, 2018 appellant filed a timely appeal from a May 11, 2018 merit decision and an August 21, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period January 20 through February 2, 2018 causally related to her accepted

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the August 21, 2018 decision, OWCP received additional evidence. 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.*

May 21, 2014 employment injury; and (2) 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 22, 2015 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 2014 she injured her neck when she was sorting mail, packages, and letters while in the performance of duty. She stopped work on May 21, 2014. OWCP initially accepted appellant's claim for right brachial neuritis or radiculitis, and it later expanded the accepted conditions to include cervical disc disorder with radiculopathy (cervicothoracic region), and strain of the muscles and tendons of the right rotator cuff. On November 3, 2017 Dr. Barrett S. Brown, a Board-certified orthopedic surgeon, performed OWCP-authorized right shoulder surgery, including arthroscopic biceps tenodesis and rotator cuff repair. OWCP paid appellant wage-loss compensation on the supplemental rolls from September 19 through November 11, 2017, and on the periodic rolls from November 12, 2017 through January 23, 2018.

On December 22, 2017 Dr. Brown removed the sutures and staples from the November 3, 2017 surgery and instructed appellant to return to limited activities as tolerated. In a January 4, 2018 report, he medically cleared appellant to return to work light/modified-duty status.

On January 22, 2018 Dr. Charles Reinhardt, an osteopath specializing in pain medicine, diagnosed cervical spinal disc disease with spasm and several right shoulder conditions, including multiple tendon strains/tears and acromioclavicular joint. He opined that appellant would remain off work due to her right shoulder condition with poor range of motion. In a duty status report (Form CA-17) dated January 22, 2018, Dr. Reinhardt opined that she was totally disabled. In a work status report dated January 22, 2018, he noted that appellant should remain off work until February 12, 2018.

On January 23, 2018 the employing establishment offered appellant full-time work (eight hours per day, five days per week) as a modified rural carrier effective January 23, 2018 subject to restrictions from Dr. Brown. Appellant accepted the position and returned to work on January 24, 2018 without wage loss.

Dr. Brown treated appellant on February 5, 2018 and, in a report of the same date, he instructed her to remain out of work. In a work status report dated February 5, 2018, he noted that her medical condition prevented her from returning to work.<sup>3</sup>

On February 12, 2018 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for leave without pay (LWOP) due to disability from January 20 through February 2, 2018. She requested eight hours of LWOP on January 22 and 23, 2018 and noted "OWCP paid." On an accompanying time analysis form (Form CA-7a) completed on February 12, 2018, appellant reported working eight hours a day from January 24 through February 2, 2018. She noted LWOP for 1.2 hours on January 24 through 27, and February 1, 2018 (adding the

---

<sup>3</sup> Appellant submitted a January 19, 2018 arthrogram of the right upper extremity which contained an impression of no deep vein thrombosis within the deep venous structures.

notation “difference reg. rt. paid”), and 2 hours of LWOP on January 29, 31, and February 2, 2018 (adding the notation “aquatic therapy”). On the same Form CA-7a, an employing establishment official noted on February 14, 2018 that appellant was working eight hours a day and that her claim of lost time from work could not be verified.<sup>4</sup>

In a report dated February 12, 2018, Dr. Reinhardt opined that appellant was unable to perform her regular work and would remain off work due to her right shoulder condition. In a February 12, 2018 Form CA-17 report, he noted that she was totally disabled. In a work status report of the same date, Dr. Reinhardt indicated that appellant could not work from February 12 to March 12, 2018.

In a February 27, 2018 development letter, OWCP notified appellant that the evidence submitted was insufficient to establish **that** she was entitled to wage-loss compensation for the period January 20 through February 2, 2018. It advised her that the employing establishment indicated that she had been working eight hours per day. OWCP requested that appellant submit medical evidence supporting disability from work during the claimed period. It afforded her 30 days to submit the requested evidence.

Appellant submitted a March 5, 2018 magnetic resonance imaging (MRI) scan of the right shoulder and a March 8, 2018 narrative report in which Dr. Brown diagnosed right adhesive capsulitis and sprain of the right rotator cuff capsule. In work status reports dated March 8 and April 5, 2018, Dr. Brown indicated that she was “off work.” In Form CA-17 reports dated March 12 and April 9, 2018, Dr. Reinhardt advised that appellant was totally disabled.

By decision dated April 23, 2018, OWCP denied appellant’s claim for wage-loss compensation for the period February 5 through 16, 2018 and for intermittent periods between March 5 and April 13, 2018.<sup>5</sup>

On May 3, 2018 appellant requested reconsideration of the April 23, 2018 decision. She submitted a May 3, 2018 work excuse report from Dr. Brown who returned her to light-duty work. In a May 7, 2018 report, Dr. Reinhardt diagnosed status post rotator cuff repair of the right shoulder and indicated that appellant would remain off work due to her right shoulder condition.

By decision dated May 11, 2018, OWCP denied appellant’s claim for wage-loss compensation from January 20 through February 2, 2018. It found that she was on the periodic rolls for total disability through January 23, 2018 and therefore was not entitled to additional wage-

---

<sup>4</sup> Appellant later submitted several claims for compensation (Form CA-7) requesting wage-loss compensation due to disability from February 5 through 16, 2018, February 19 through March 2, 2018, March 5 through 16, 2018, March 19 through March 30, 2018, and April 2 through 13, 2018. These claims are not the subject of the current appeal.

<sup>5</sup> In its April 23, 2018 decision, OWCP characterized appellant as having filed a wage-loss compensation claim for “March 5, 2018 and continuing” but the specific periods commencing March 5, 2018 for which she claimed entitlement to wage-loss compensation were March 5 through 16, 2018, March 19 through 30, 2018, and April 2 through 13, 2018. Appellant also filed a disability claim for the period February 19 through March 2, 2018, but the case record does not contain an OWCP decision addressing this claim. The Board notes that it does not have jurisdiction over the April 23, 2018 decision as more than 180 days has elapsed from the issuance of the decision to the filing of the present appeal on October 29, 2018. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

loss compensation for January 20 through 23, 2018. OWCP further indicated that appellant returned to work on a full-time basis (eight hours per day, five days per week) on January 24, 2018 and continued full-time work through February 2, 2018. Therefore, it found that she did not have wage loss and was not entitled to wage-loss compensation for this period.

Appellant continued to submit evidence after her request for reconsideration of OWCP's April 23, 2018 decision, including a May 3, 2018 narrative report from Dr. Brown who diagnosed right adhesive capsulitis, sprain of the right rotator cuff capsule, and superior glenoid labrum lesion of the right shoulder. In work excuse reports dated June 4 and 18, 2018, he noted that appellant was unable to return to work.

In a May 7, 2018 Form CA-17 report, Dr. Reinhardt diagnosed radiculopathy and returned appellant to work on a full-time basis with restrictions. In a May 7, 2018 work status report, he indicated that she could perform light-duty work. In a narrative report and a Form CA-17 report dated June 4, 2018, Dr. Reinhardt opined that appellant was unable to perform her regular work. On July 2, 2018 he produced a narrative report and a Form CA-17 report in which he advised that appellant could not perform any work.

Appellant submitted May 31, June 15, 22, and 29, 2018 reports from her physical therapists, Eloina Parsons and Steven Sopher.<sup>6</sup> An unsigned June 13, 2018 emergency room report reveals that appellant was treated for right shoulder pain on that date. Appellant was also treated on July 26, 2018 by Dr. Ryan M. Stuckey, a Board-certified orthopedic surgeon, who diagnosed cervical spondylosis and symptoms of cervical radicular syndrome.

Appellant also submitted evidence which was previously of record, including a report from Dr. Reinhardt dated July 10, 2017, reports from Dr. Brown dated October 19 and November 3, 2017, and February 5, 2018, two MRI scans dated September 18, 2017 (right shoulder and cervical spine), an arthrogram dated January 19, 2018 (right upper extremity), and an MRI scan dated March 5, 2018 (right shoulder).

By decision dated August 21, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>7</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>8</sup> Whether a particular injury causes an employee to

---

<sup>6</sup> Appellant also submitted an April 23, 2018 report of an aquatic therapy session and a June 28, 2018 FCE report produced by physical therapists with illegible signatures.

<sup>7</sup> *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

<sup>8</sup> *D.R.*, Docket No. 18-0232 (issued October 2, 2018).

become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>9</sup>

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>10</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>11</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>12</sup>

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed. A claimant may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location. OWCP's procedures further provide that wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period January 20 through February 2, 2018 causally related to her accepted May 21, 2014 employment injury.

The case record reveals that OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls from September 19 through November 11, 2017, and on the periodic rolls from November 12, 2017 through January 23, 2018. As appellant received wage-loss compensation for total disability during this period, she would not be entitled to any additional wage-loss compensation for the dates falling within this period for which she claimed disability in connection with the present claim, *i.e.*, January 20 through 23, 2018.<sup>14</sup>

On January 23, 2018 the employing establishment offered appellant a full-time modified position (eight hours per day, five days per week) and she returned to work in this position on

---

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

<sup>10</sup> See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); 20 C.F.R. § 10.5(f).

<sup>11</sup> See *B.A.*, Docket No. 17-1471 (issued July 27, 2018).

<sup>12</sup> See *D.R.*, *supra* note 8.

<sup>13</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19a (February 2013). See also *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>14</sup> See *supra* note 10.

January 24, 2018 without wage loss. She requested 1.20 hours of leave for each day from January 24 through 27, 2018, and for February 1, 2018. However, appellant worked on a full-time basis and was paid for eight hours of work for each of these days. She was therefore not entitled to wage-loss compensation for the claimed disability from work for these days.<sup>15</sup> Additionally, appellant requested two hours of leave for each of the days January 28 and 31, and February 2, 2018 in order to attend aquatic therapy. The record reveals that appellant worked on a full-time basis and was paid for eight hours of work for each of these days. As noted above, wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. The case record reflects that appellant participated in aquatic therapy on two of the days she claimed wage-loss compensation for such participation, January 31 and February 2, 2018. However, as noted, appellant was paid for eight hours of work on each of these days and would not be entitled to additional wage-loss compensation. In three January 22, 2018 reports, Dr. Reinhardt indicated that appellant was totally disabled. The Board notes, however, that appellant was fully compensated, either through wage-loss compensation or pay, during the entire claimed period of disability, *i.e.*, January 20 through February 2, 2018. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>16</sup> Therefore, appellant would not be entitled to wage-loss compensation for the claimed disability from work for these days.

### **LEGAL PRECEDENT -- ISSUE 2**

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 or her own motion or on application.<sup>17</sup>

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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>18</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>19</sup> If it chooses to grant reconsideration, it reopens

---

<sup>15</sup> See *B.A.*, *supra* note 11.

<sup>16</sup> See *supra* note 13.

<sup>17</sup> 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

<sup>18</sup> 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>19</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the originally contested decision. 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.

and reviews the case on its merits.<sup>20</sup> 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.<sup>21</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>22</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

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 of OWCP's April 23, 2018 decision,<sup>24</sup> 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).

In support of her request for reconsideration, appellant submitted reports from Dr. Brown dated November 3, 2017,<sup>25</sup> May 3, June 4, and 18, 2018, reports from Dr. Reinhardt dated May 7, June 4, and July 2, 2018, and a report from Dr. Stuckey dated July 26, 2018. These reports collectively addressed appellant's medical condition and ability to work in November 2017 and between May and July 2018. While this medical evidence was new, its submission did not require reopening appellant's claim for merit review because it was not relevant to the issue of the April 23, 2018 decision for which she requested reconsideration, *i.e.*, whether she submitted sufficient medical evidence to establish work-related disability for the period January 20 through February 2, 2018. None of the above-noted reports contains an opinion that appellant sustained disability from work for these periods causally related to the accepted May 21, 2014 employment

---

<sup>20</sup> 20 C.F.R. § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>21</sup> *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>22</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>23</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>24</sup> *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

<sup>25</sup> Appellant submitted several November 3, 2017 medical reports signed by Dr. Brown. Other than Dr. Brown's principle November 3, 2017 report describing the right shoulder surgery he performed on that date, these reports had not previously been part of the case record.

injury. As noted above, 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.<sup>26</sup>

Appellant also submitted a report from Dr. Reinhardt dated July 10, 2017, reports from Dr. Brown dated October 19, November 3, 2017, and February 5, 2018, MRI scans dated September 18, 2017 and March 5, 2018, and an arthrogram dated January 19, 2018. However, this evidence is duplicative of evidence previously submitted and considered by OWCP. Evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>27</sup> Therefore, these reports are insufficient to require OWCP to reopen appellant's claim for a merit review.<sup>28</sup>

Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3). The Board accordingly finds that appellant did not meet 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.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation from January 20 through February 2, 2018 causally related to her May 21, 2014 employment injury. 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).

---

<sup>26</sup> See *supra* note 23. Appellant also submitted new administrative documents from her November 3, 2017 surgery, but these documents would not be relevant to the medical issue of the April 23, 2018 decision. *Id.*

<sup>27</sup> See *supra* note 22.

<sup>28</sup> Appellant submitted April 17, 19, 20, 23, and June 28, 2018 reports from attending physical therapists with illegible signatures and May 31, June 15, 22, and 29, 2018 reports signed by her physical therapists, Ms. Parsons and Mr. Sophr. Appellant's submission of these reports would not require reopening of her claim for merit review as they are not relevant to the medical issue of the April 23, 2018 decision because physical therapists are not physicians as defined under FECA and their reports do not constitute medical evidence. See *S.T.*, Docket No. 17-0913 (issued June 23, 2017); 5 U.S.C. § 8101(2). Appellant also submitted a June 13, 2018 emergency room report, but it is not relevant to the medical issue of the April 23, 2018 decision because it is unsigned and does not constitute medical evidence. See *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if unsigned and there is no indication it was completed by a physician as defined under FECA).



**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21 and May 11, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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