

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

L.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Haven, CT, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-0162
Issued: May 27, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 28, 2019 appellant filed a timely appeal from a May 8, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated October 23, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the case.

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 8, 2018 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, at 10:00 a.m. that day, she sustained back and neck injuries when her

¹ 5 U.S.C. § 8101 *et seq.*

delivery vehicle was struck from behind by another mail truck, while in the performance of duty. She stopped work at the time of the injury.

In a development letter dated May 10, 2018, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a May 11, 2018 attending physician's report (Form CA-20) regarding a May 8, 2018 examination, Dr. Jacqueline Satchell, a Board-certified internist, noted treating appellant for whiplash and back pain sustained in a May 8, 2018 employment incident. She diagnosed cervicalgia and lumbago with sciatica. Dr. Satchell checked a box marked "no" indicating that the diagnosed conditions were not caused or aggravated by the May 8, 2018 employment incident. She held appellant off work through June 22, 2018 and returned her to light-duty work effective June 23, 2018.

In a May 11, 2018 duty status report (Form CA-17), Dr. Satchell indicated that appellant sustained cervicalgia and low back pain due to a May 8, 2018 motor vehicle accident

By decision dated June 22, 2018, OWCP accepted that the May 8, 2018 motor vehicle accident occurred as alleged, however, it found that the medical evidence of record did not contain a medical diagnosis due to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant returned to full, unrestricted duty on June 26, 2018.

On July 19, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She subsequently submitted additional evidence.

A May 8, 2018 employing establishment accident report confirmed that appellant's delivery vehicle was struck from behind by a coworker's delivery vehicle. Appellant complained of neck and back pain and requested medical treatment.

Appellant resubmitted the May 11, 2018 Form CA-20.

In a July 12, 2018 witness statement, appellant's coworker, O.E., confirmed that, on the morning of May 8, 2018, a coworker struck appellant's delivery vehicle from behind.

In a July 18, 2018 report, Dr. Satchell opined that appellant sustained a whiplash injury on May 8, 2018 in a rear-end motor vehicle accident at work. She noted that this "accident resulted in pain and discomfort" to appellant's neck and low back.

By decision dated October 23, 2018, an OWCP hearing representative affirmed the June 22, 2018 decision. The hearing representative emphasized that Dr. Satchell's assessment of cervicalgia, neck pain, and low back pain were considered descriptions of symptoms rather than a compensable medical diagnosis.

On April 2, 2019 appellant requested reconsideration. In an April 17, 2019 letter, she contended that there were numerous witnesses to the May 8, 2018 employment incident, and that Dr. Satchell's reports were sufficient to establish causal relationship. Appellant submitted additional evidence.

Appellant provided two hand-drawn, undated diagrams of the accident, and a May 9, 2018 employing establishment accident report. She submitted a different copy of Dr. Satchell's May 11, 2018 Form CA-20 report noting findings of a whiplash injury with neck and back pain. Dr. Satchell diagnosed cervicalgia, neck and back pain, and preexisting sprain of ligaments of cervical spine (ICD code S13.4). She checked a box marked "yes" indicating that appellant's lumbago with sciatica (ICD code M54.41) and cervicalgia (M54.2) were causally related to the May 8, 2018 employment incident. Appellant also resubmitted copies of documents previously of record.

By decision dated May 8, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

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.²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.³

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If OWCP 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

² *Id.* at § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see also 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). 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 2.1602.4b.

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

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁶

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁷ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁸ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁹

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).

On April 2, 2019 appellant requested reconsideration of OWCP's October 23, 2018 decision denying her traumatic injury claim because the medical evidence of record did not contain a diagnosis causally related to the accepted May 9, 2018 employment incident. In support of her request, she submitted an updated version of Dr. Satchell's May 11, 2018 report. The Board finds that this updated version of the report constitutes relevant and pertinent new evidence in support of the claim. The updated form included the diagnosis code for a preexisting condition and checked the box marked "yes" indicating that the employment incident was related to the diagnosed condition. The Board has held that in support of a request for reconsideration an appellant is not required to submit all evidence necessary to discharge his or her burden of proof. He or she need only submit relevant and pertinent evidence not previously considered by OWCP.¹⁰ The Board finds that the updated report constitutes pertinent new and relevant evidence, which directly addresses the issue of causal relationship.¹¹ Appellant's request for reconsideration therefore met the third standard for obtaining merit review of her case under 20 C.F.R. § 10.606(b)(3). Accordingly, she is entitled to a merit review.

The Board will set aside OWCP's May 8, 2019 decision denying appellant's request for reconsideration and will remand the case for a merit review. After any necessary further development, OWCP shall issue an appropriate decision.

⁶ *Id.* at § 10.608(b); *L.C.*, Docket No. 18-0787 (issued September 26, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *See S.F.*, Docket No. 18-0516 (issued February 21, 2020); *P.L.*, Docket No. 18-1145 (issued January 4, 2019); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁸ *S.S.*, Docket No. 18-0647 (issued October 15, 2018).

⁹ *P.L.*, *supra* note 7; *Annette Louise*, 54 ECAB 783 (2003).

¹⁰ *See T.K.*, Docket No. 19-1700 (issued April 30, 2020); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹¹ *See H.D.*, Docket No. 18-0865 (issued February 10, 2020).

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).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 27, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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