

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

V.C., Appellant)	
)	
and)	Docket No. 19-1459
)	Issued: March 9, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Orlando, FL, Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2019 appellant, through counsel, filed a timely appeal from a December 27, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated December 22, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this 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).

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.

FACTUAL HISTORY

On January 5, 2016 appellant, then a 34-year-old transportation services screener supervisor, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2016 she developed whiplash when an individual elbowed her in the head while in the performance of duty. She did not stop work.

A January 5, 2016 hospital discharge summary noted that appellant was treated on January 4, 2016 and instructed her to follow up with her primary care physician.

On January 6, 2016 appellant sought treatment with Dr. Sarah Laman, a chiropractor, who recommended that appellant be off work for two weeks.

A January 7, 2016 disability note held appellant off work for five days.²

In a January 11, 2016 disability note, Dr. German B. Calero, a physician specializing in family medicine, released appellant to return to work on January 27, 2016.

In progress notes dated January 13, 18, 20, 27, and February 3, 2016, Dr. Calero diagnosed a cervical sprain based on subjective and objective pain complaints and indicated that the condition was work related. On these reports he listed December 4, 2015 as the date of injury.

A January 26, 2016 magnetic resonance imaging scan revealed C5-6 disc bulge.

In a January 27, 2016 status report form and a February 10, 2016 progress report, Dr. Calero noted a diagnosis of cervical strain with a January 4, 2016 date of injury.

An unsigned disability note dated February 15, 2016 indicated that appellant was disabled from work until February 29, 2016.

A February 26, 2016 duty status report (Form CA-17) related a diagnosis of bulging cervical disc, with an injury date of January 4, 2016, and indicated that appellant was currently totally disabled from work.³

In a development letter dated March 4, 2016, OWCP notified appellant that her claim was initially administratively handled to allow medical payments as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, appellant's claim had been reopened because medical bills had exceeded \$1,500.00. She was notified of the deficiencies of her claim. OWCP advised her of the type of medical and factual evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

In response to OWCP's request, in a February 8, 2016 progress report, Dr. Calero noted December 4, 2015 as appellant's date of injury and diagnosed cervical sprain. OWCP also received progress notes from Dr. Calero dated February 15, 22, 24, and 29, and March 7 and 9, 2016 diagnosing an employment-related cervical sprain and CA-17 forms dated January 27 and

² The physician's signature on the note is illegible.

³ The signature on the form is illegible.

February 26, 2016⁴ diagnosing a bulging cervical disc and neck pain with an injury date of January 4, 2016. An April 18, 2016 Form CA-17 diagnosed neck pain with a January 4, 2016 date of injury.

By decision dated April 13, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the diagnosed cervical condition was causally related to the accepted January 4, 2016 employment incident.

In progress notes dated April 6, 11, and 18, 2016, Dr. Calero diagnosed a cervical sprain, which he noted to be work-related, and an injury date of January 4, 2016.

In an April 8, 2016 report, Dr. Robert R. Reppy, an osteopath specializing in family medicine, provided examination findings, noted a January 4, 2016 injury date, and a diagnosis of bulging C5-6 disc with upper extremity radiculopathy. In reports dated May 6, July 22, and August 26, 2016, he diagnosed bilateral cubital entrapment syndrome and bulging C5-6 disc with upper extremity radiculopathy. Dr. Reppy noted January 4, 2016 as the date of injury, summarized appellant's subjective complaints, and provided examination findings.

In a form dated May 10, 2016, with a postmark date of May 13, 2016, appellant requested review of the written record by an OWCP hearing representative.

In a June 17, 2016 Form CA-17, Dr. Reppy diagnosed neck pain with an injury date of January 4, 2016.

By decision dated September 29, 2016, OWCP's hearing representative affirmed the April 13, 2016 decision.

In reports dated September 30 and October 28, 2016, Dr. Reppy diagnosed bilateral cubital entrapment syndrome and bulging C5-6 disc with upper extremity radiculopathy. He summarized appellant's complaints, provided examination findings, reported an injury date of January 4, 2016, and noted she was currently working with restrictions.

On September 29, 2017 appellant, through counsel, requested reconsideration.

In a November 7, 2016 report, Dr. Reppy diagnosed C5-6 protruding disc with upper extremity radiculopathy and provided work restrictions. He noted that appellant was injured on January 4, 2016 at work when she was bashed in the back of her head with a pile of bins carried by another employee. Dr. Reppy explained that this type of rapid cervical forward movement is considered whiplash and caused cervical disc ruptures.

By decision dated December 22, 2017, OWCP denied modification of its prior decision.

On December 21, 2018 appellant requested reconsideration. No evidence or argument accompanied appellant's request.

⁴ The signatures on the forms are illegible.

By decision dated December 27, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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).

In her reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant argument not previously considered. Accordingly, she 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).

Furthermore, appellant failed to submit any evidence in support of her request for reconsideration. Therefore, OWCP was not required to open her claim for reconsideration of the merits in accordance with the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).⁹

On appeal counsel asserts that OWCP improperly denied appellant's request for a merit review as new evidence had been submitted. Contrary to counsel's assertion, no new evidence

⁵ 20 C.F.R. § 10.608(b)(3); *see also* *H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original 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 (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *H.H.*, *supra* note 5; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *R.A.*, Docket No. 19-0821 (issued September 12, 2019); *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

had been submitted with appellant's December 21, 2018 reconsideration request or subsequent to the December 22, 2017 decision denying modification.

As appellant's request for reconsideration did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied her request for reconsideration without reopening the case for review on the merits.¹⁰

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 December 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *R.C.*, Docket No. 17-0595 (issued September 7, 2017).