

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 19-1610</b>
	)	<b>Issued: October 27, 2020</b>
US POSTAL SERVICE, AMES POST OFFICE,	)	
Omaha, NE, Employer	)	
	)	

*Appearances:*  
Stephanie N. Leet, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 23, 2019 appellant, through counsel, filed a timely appeal from a January 25, 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 August 9, 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 December 15, 2015, appellant, then a 61-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2015 she injured her left knee and foot when she stepped in mud on a steep gravel driveway and slipped while in the performance of duty. On December 30, 2015 OWCP accepted appellant's claim for a left knee sprain.<sup>3</sup>

On January 28, 2016 the employing establishment offered appellant a modified limited-duty position. Appellant did not accept the job offer and by letter dated February 26, 2016 she explained that she could not sign the job offer since her physician had not released her to return to work.

A February 4, 2016 work status note by Dr. William Singer, a Board-certified orthopedic surgeon, indicated that appellant could return to sedentary work, which included the restrictions of desk work only, lifting up to 10 pounds, and occasionally lifting and/or carrying particular articles such as dockets, ledgers, and small tools.

In a February 9, 2016 follow-up medical report, Dr. Singer indicated that appellant was doing better as she had been off of her knee and not working over the past several weeks. Dr. Singer stated that appellant's stable meniscus tear was not clinically significant and that he would defer any more aggressive treatment. He related that appellant had improved, and that he would allow appellant to attempt to return to her normal work activities as tolerated and would continue to treat her on an as-needed basis. In a February 9, 2016 return to work form, Dr. Singer recommended that appellant return to work with no limitations on February 10, 2016.

By decision dated May 20, 2016, OWCP terminated appellant's wage-loss compensation, effective February 10, 2016, finding that the weight of medical evidence rested with Dr. Singer, who found that appellant was no longer disabled due to her accepted December 13, 2015 employment injury, and that she could return to full-duty work. OWCP also related that appellant's claim would remain open for payment of medical benefits.

OWCP continued to receive progress reports from Dr. Singer. In a July 19, 2016 letter, Dr. Singer recommended proceeding with an arthroscopy for her work-related medial meniscus tear as appellant had failed to respond to conservative treatment and continued to display disabling left medial knee symptoms.

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<sup>3</sup> On January 18, 2016 appellant requested that OWCP expand the acceptance of the claim to include right knee, left foot, lower back, and left thigh conditions. By decision dated March 11, 2016, OWCP denied expansion of the claim as the medical evidence of record was insufficient to establish causal relationship between those conditions and the accepted employment injury.

On May 11, 2017 appellant, through counsel, requested reconsideration of the May 20, 2016 termination decision and submitted additional evidence.

By decision dated August 9, 2017 OWCP denied modification.

OWCP thereafter received a June 11, 2017 report from Dr. Matthew West, a pain medicine specialist, in which he indicated that appellant suffered a work-related injury on December 13, 2015, causing a medial meniscus tear as shown in the February 3, 2016 MRI scan of appellant's left knee. Dr. West noted appellant's history of injury regarding the December 13, 2015 employment injury and indicated that appellant initially experienced knee pain and low back pain secondary to the knee pain. He explained that appellant's left knee injury resulted in gait alterations, which caused a worsening of low back and lateral hip pain and resulted in appellant's diagnosed conditions of sacroiliac joint dysfunction and greater trochanteric bursitis. Dr. West opined that the altered gait mechanics directly affect pelvic mechanics, which change movement patterns and muscle balance through the lumbar paraspinals, sacroiliac joint and hip external rotators. He concluded that appellant's ongoing symptoms in her low back and hip were therefore related to her December 13, 2015 employment injury.

In an October 25, 2017 letter, counsel again argued that, based on Dr. West's June 11, 2017 report, OWCP should expand acceptance of appellant's claim, as he established a causal relationship between her additional diagnosed conditions and appellant's accepted December 13, 2015 employment injury.<sup>4</sup>

On July 26, 2018 appellant, through counsel, requested reconsideration of the August 9, 2017 decision. Counsel continued to argue that OWCP improperly terminated appellant's wage-loss compensation benefits.

By decision dated January 25, 2019, OWCP denied appellant's request for reconsideration.

### **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 own motion or on application.<sup>5</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

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<sup>4</sup> In an October 26, 2017 letter, OWCP advised appellant that it was reviewing her request for expansion of the acceptance of her claim to include additional conditions and began developing this aspect of her claim. The Board notes that OWCP has not issued a final decision with respect to this aspect of appellant's claim.

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

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</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>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</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>9</sup>

### 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).

On reconsideration, appellant, through counsel, reiterated arguments that OWCP had improperly terminated appellant's wage-loss compensation benefits and that OWCP should have initially further developed appellant's claim to determine whether her diagnosed additional conditions were causally related to the accepted December 13, 2015 employment injury. However these arguments were duplicative of arguments previously of record and therefore do not constitute a basis for reopening the case.<sup>10</sup> Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further 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).<sup>11</sup>

In further support of her request for reconsideration, appellant submitted a narrative medical report dated June 11, 2017 from Dr. West. Dr. West concluded that appellant's ongoing symptoms in her low back and hip were related to her December 13, 2015 employment injury. However, this opinion is irrelevant as to whether appellant has continuing disability or residuals resulting from the accepted left knee sprain, which was the basis for the termination of appellant's wage-loss compensation benefits.. 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

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<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> *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.

<sup>8</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>10</sup> *See B.O.*, Docket No. 20-0156 (issued May 13, 2010).

<sup>11</sup> *Supra* note 5 at § 10.606(b)(3); *see D.S.*, Docket No. 18-0353 (issued February 18, 2020).

reopening a case.<sup>12</sup> Consequently, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>13</sup>

### **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 January 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 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

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<sup>12</sup> *D.C.* Docket No. 19-0354 (issued May 27, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>13</sup> *D.M., id.; 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).