

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

C.L., Appellant)	
)	
and)	Docket No. 21-0142
)	Issued: June 15, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Orlando, FL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 9, 2020 appellant, through counsel, filed a timely appeal from a May 11, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from OWCP's last merit decision, dated May 6, 2019, to the filing of

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 A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period for the May 11, 2020 decision expired on Saturday, November 7, 2020. If the last day to file an appeal falls on a Saturday, Sunday, or Federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). The appeal in this case, received by the Board on Monday, November 9, 2020, was therefore timely filed.

this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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

This case has previously been before the Board.⁵ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 9, 2014 appellant, then a 53-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed neck, bilateral shoulder, and bilateral arm conditions due to factors of her federal employment, including repetitive pushing, pulling heavy containers, lifting, bending, and twisting. She noted that she first became aware of her condition on March 30, 2014 and first realized its relationship to her federal employment on April 25, 2014. Appellant did not stop work.

On May 13, 2015 OWCP accepted appellant's claim for temporary aggravation of degeneration of the cervical intervertebral disc, temporary aggravation of cervical radiculopathy, and bilateral shoulder impingement. It paid her wage-loss compensation on the supplemental rolls, effective May 16, 2015.

By decision dated January 18, 2017, OWCP found that appellant's cervical disc degeneration and cervical radiculopathy had resolved.

On December 19 and 22, 2017 and January 8, 2018 appellant filed claims for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for intermittent dates of disability during the period January 6, 2017 through January 5, 2018. Attached time analysis forms (Form CA-7a), dated December 19, 2017 and January 8, 2018 indicated that she was claiming a total of 296 hours of lost time from work during this period.

In a development letter dated January 2, 2018, OWCP requested that appellant provide additional medical information supporting that she was disabled for the periods claimed on the CA-7 forms.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the May 11, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

⁵ Docket No. 20-0510 (issued June 9, 2021).

OWCP subsequently received a December 22, 2017 report from Dr. Robert R. Reppy, an osteopath specializing in family medicine, who noted that appellant experienced neck and left shoulder pain. He indicated that she missed work due to a flare-up of her condition. Dr. Reppy examined appellant and diagnosed disc herniation, bilateral T1 neuropathy, cervical stenosis at multiple levels, left shoulder degenerative joint disease, and cervical disc herniation with radiculopathy. He noted that appellant was expected to miss up to five days of work a month due to flare-ups of her condition. In an accompanying duty status report (Form CA-17), Dr. Reppy advised that appellant could resume full-time work with the restriction of no lifting of more than 20 pounds.

In January 4 and 26, 2018 work excuse notes with illegible signatures, appellant was excused from work from January 3 through 8, and from January 24 through 26, 2018 due to flare-ups of her shoulder condition.

By decision dated February 6, 2018, OWCP denied appellant's claim for compensation for intermittent dates of disability during the period February 10, 2017 through January 4, 2018 and continuing. It found that the medical evidence of record was insufficient to establish disability from work during the claimed periods.

Appellant continued to file CA-7 forms for intermittent dates of disability and submit medical evidence.

In a January 26, 2018 report, Dr. Reppy noted that appellant experienced neck and left shoulder pain. He opined that her cervical disc disease had not resolved and indicated that she missed three days of work due to flare-ups of this condition. Dr. Reppy provided physical examination findings and advised that appellant was expected to miss up to five days of work a month due to flare-ups of her condition.

On February 6, 2019 appellant, through counsel, requested reconsideration. Counsel argued that appellant's cervical disc degeneration and radiculopathy had not yet resolved. He further asserted that appellant had ongoing shoulder problems that remained uncontroverted.

Appellant submitted reports and Form CA-17 reports from Dr. Reppy, dated February 15 through April 12, 2019, who provided physical examination findings and described appellant's bilateral shoulder, neck, and lumbar treatment.

By decision dated May 6, 2019, OWCP modified its February 6, 2018 decision, finding that appellant was entitled to wage-loss compensation for intermittent dates of disability, totaling 20 hours, during the period April 27 through November 30, 2017. It further found that the medical evidence of record was insufficient to establish disability from work during the remaining claimed periods, *i.e.*, February 10, 2017 through January 4, 2018.

Appellant continued to submit reports and Form CA-17 reports from Dr. Reppy, dated May 17, 2019 through March 13, 2020, who provided physical examination findings, described her course of treatment, and listed her work restrictions.

On May 6, 2020 appellant, through counsel, requested reconsideration. Counsel argued that appellant had to miss work due to flare-ups of her accepted conditions. He referenced

Dr. Reppy's January 26, 2018 report and noted that his subsequent reports documented appellant's flare-ups.

By decision dated May 11, 2020, 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. The Secretary of Labor may review an award for or against compensation, at any time, on his or her own motion or on application.⁶

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.⁷

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 If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

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 timely request for reconsideration, appellant, through counsel, argued that she had to miss work due to flare-ups of her accepted conditions, and that, therefore, OWCP improperly denied her intermittent disability claim. The Board finds that this argument does not show that OWCP erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to

⁶ 5 U.S.C. § 8128(a); *see J.T.*, Docket No. 19-1829 (issued August 21, 2020); *W.C.*, 59 ECAB 372 (2008).

⁷ 20 C.F.R. § 10.606(b)(3); *see J.V.*, Docket No. 19-0990 (issued August 26, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *Id.* at § 10.607(a); *see M.M.*, Docket No. 20-0523 (issued August 25, 2020).

⁹ *Id.* at § 10.608(a); *see M.M.*, Docket No. 20-0574 (issued August 19, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *see J.V.*, *supra* note 7; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). The underlying issue on reconsideration is whether appellant has established entitlement to wage-loss compensation for intermittent dates of disability during the period February 10, 2017 through January 4, 2018. This is a medical issue which must be addressed by relevant medical evidence not previously considered.¹²

Prior to her request for reconsideration, appellant submitted numerous reports and Form CA-7 reports dated May 17, 2019 through March 13, 2020 from Dr. Reppy, who provided physical examination findings, described her course of treatment, and listed her work restrictions. However, Dr. Reppy did not address the claimed periods of disability or provide an opinion on whether appellant's disability was causally related to her accepted employment conditions. As such, these reports are irrelevant to the underlying issue in this case.¹³ The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ Therefore, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁵

Accordingly, the Board finds that appellant has not met any of the requirements enumerated under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied her request for reconsideration without reopening the case for review on the merits.¹⁶

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).

¹¹ *Supra* note 7.

¹² *Y.L.*, Docket No. 20-1025 (issued November 25, 2020).

¹³ *Id.*

¹⁴ *See T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000).

¹⁵ *Supra* note 7.

¹⁶ *See C.M.*, Docket No. 19-1610 (issued October 27, 2020); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *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).

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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