

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

A.N., Appellant)	
)	
and)	Docket No. 20-1487
)	Issued: March 19, 2021
U.S. POSTAL SERVICE, ALBANY POST)	
OFFICE, Albany, KY, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On August 6, 2020 appellant, through counsel, filed a timely appeal from a July 1, 2020 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP).² 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.

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 Counsel did not appeal from OWCP’s merit decision dated April 23, 2020. Counsel identified only the July 1, 2020 nonmerit decision on the application for review (Form AB-1). As such, the April 23, 2020 merit decision is not properly before the Board on the current appeal. *See* 20 C.F.R. § 501.3; *see also M.M.*, Docket No. 20-0523 (issued August 25, 2020).

³ 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 August 12, 2019 appellant, then a 59-year-old sales, service, and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed a "deterioration of tibiolar joint" of her left ankle due to factors of her employment, including standing and walking on cement floors 40 hours per week at work.⁴ She note that she first became aware of her condition on May 3, 2019 and realized its relation to her federal employment on July 25, 2019. Appellant stopped work on July 24, 2019.

In a July 9, 2019 report and July 11, 2019 note, Dr. Matthew T. Eaton, an osteopath who specializes in family medicine, reviewed appellant's history and noted examination findings of ankle pain with dorsiflexion and plantar flexion. He diagnosed chronic neck pain and left ankle pain and completed an August 9, 2019 duty status form report (Form CA-17), which indicated that appellant could work full time with restrictions.

A July 9, 2019 left ankle x-ray examination report revealed a large interior calcaneal spur and moderate degenerative change at the tibiotalar articulation.

In an August 23, 2019 development letter, OWCP advised appellant of the type of medical and factual evidence necessary to support her claim and provided a questionnaire for completion. It afforded her 30 days to submit the requested information. A separate letter of even date requested additional information from the employing establishment.

On October 16, 2019 OWCP received appellant's completed development questionnaire wherein she described her employment duties of sorting mail and working the retail window, and noted that she performed all her duties while standing and walking on concrete floors.

Appellant also submitted a September 6, 2019 report by Denita McDonald, a registered nurse. Ms. Donald conducted a physical examination and observed pain with range of motion of the left ankle. She diagnosed ankle instability with pain.

In a September 6, 2019 report, Dr. Jerry Roberts, a podiatrist, indicated that appellant was referred for left ankle joint deterioration with pain. He reviewed her history and noted left foot examination findings of significant collapse of the metatarsals with significant loss of the fat pad and pain with palpation of the metatarsal heads. Dr. Roberts diagnosed secondary osteoarthritis. He reported that appellant had arthritis to the left subtalar joint likely due to extended weight bearing from her work duties.

⁴ Under OWCP File No. xxxxxx885, OWCP accepted that appellant sustained a back contusion and right foot fracture (metatarsal) as a result of a July 29, 2000 employment incident. OWCP administratively combined this case with the current case, under OWCP File No. xxxxxx411, with OWCP File No. xxxxxx885 serving as the master file.

In an October 15, 2019 letter, Dr. Roberts recounted appellant's complaints of years of left ankle and foot pain due to her occupation, which involved standing, walking, and lifting. He indicated that she also had rheumatoid arthritis, which was exacerbated by mechanical stress from occupational duties. Dr. Roberts provided examination findings and noted that he had prescribed a custom ankle foot orthosis.

By decision dated November 13, 2019, OWCP denied appellant's occupational disease claim, finding that the factual evidence of record was insufficient to establish that the alleged employment factors occurred as described. Accordingly, it found that the requirements had not been met to establish an injury as defined under FECA.

On November 22, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 4, 2020.

Appellant submitted an October 21, 2019 report by Shannon Kiser.⁵ Ms. Kiser reviewed appellant's history and provided left ankle examination findings. She diagnosed degenerative joint disease of the ankle and lateral ankle instability.

In a January 15, 2020 letter, Dr. Eaton indicated that appellant had worked for the employing establishment for more than 20 years where she stood on her feet constantly. He noted that she had been informed that both of her ankles were severely deteriorated, with the left worse than the right. Dr. Eaton reported that every day that appellant spent on her feet aggravated her conditions.

In a March 24, 2020 letter, Dr. Tracy Cross, a Board-certified general surgeon, described a May 3, 2019 ankle injury that appellant sustained at work. She discussed the medical treatment that appellant had received and indicated that the wearing of a brace to prevent lateral movement and nonweight bearing had given the injury time to heal. Dr. Cross reported that she had seen appellant over the last four weeks and that diagnostic testing did not show an injury. She opined that appellant had a ligamentous injury, which had healed.

In a March 31, 2020 letter, Dr. Eaton opined that appellant's condition of bilateral foot and ankle osteoarthritis was "more likely than not" caused by her years of work for the employing establishment. He described how her repetitive duties, superimposed on prior arthritis, caused stress on her ankle joints and subsequent alteration of the ankle mechanics.

By decision on April 23, 2020, OWCP's hearing representative affirmed the November 13, 2019 decision, with modification. He found that the evidence of record had established the alleged employment factors of walking and standing on concrete and diagnosis of left ankle osteoarthritis. However, the claim remained denied because the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted factors of federal employment.

⁵ Shannon Kiser's credentials are unknown.

On May 20, 2020 appellant, through counsel, requested reconsideration and resubmitted Dr. Cross' March 24, 2020 letter and Dr. Eaton's March 31, 2020 letter.

By decision dated July 1, 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 FECA⁶ 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.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹

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 reconsideration request, appellant, through counsel, did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant

⁶ *Supra* note 3.

⁷ 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).

⁸ 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).

⁹ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 (September 2020). 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.

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

legal argument not previously considered. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R 10.606(b)(3).¹²

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. With her reconsideration request, appellant resubmitted Dr. Cross' March 24, 2020 letter and Dr. Eaton's March 31, 2020 letter, which were previously of record and considered by OWCP in its April 23, 2020 decision. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹³ Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁴

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.¹⁵

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).

¹² *Supra* note 8; *see K.F.*, Docket No. 19-1846 (issued November 3, 2020).

¹³ *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

¹⁴ *Supra* note 8; *see T.H.*, Docket No. 18-1809 (issued May 23, 2019); *Johnny L. Wilson*, Docket No. 98-2536 (issued February 13, 2001).

¹⁵ *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2021
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