

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

S.W., Appellant)	
)	
and)	Docket No. 21-0208
)	Issued: October 13, 2021
U.S. POSTAL SERVICE, SEMINOLE)	
PROCESSING & DISTRIBUTION CENTER,)	
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:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 1, 2020 appellant filed a timely appeal from a June 4, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 31, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (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 an 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 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 July 15, 2018 appellant, then a 56-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2018, she developed pain and aching in her back. She indicated that the cause of the injury was unknown. On the reverse side of the claim form, the employing establishment indicated that appellant was in the performance of duty when injured and that she was on limited duty due to a previously accepted employment injury.³ Appellant stopped working on July 15, 2018 and retired from the employing establishment on August 17, 2018.

OWCP received several documents also dated July 15, 2018, including a statement from appellant indicating that she noticed pain in her back after putting away four empty automation-compatible trays; an employing establishment accident report which reflected that she reported pain in her lower back after pushing an empty dolly; and a work status form from Dr. Timothy Hendrix, a general practitioner, who noted a diagnosis of low back pain due to a July 15, 2018 work incident and who provided work restrictions.

In a July 27, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary, including a narrative medical report from her treating physician containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP afforded appellant 30 days to submit the requested information.

Thereafter, OWCP received a July 15, 2018 report from Amara Travers, a physician assistant, noting that appellant presented with complaints of severe lower back pain which she attributed to pushing a heavy object while at work that day. Ms. Travers performed a physical examination and diagnosed lumbar back pain.

In a report dated July 22, 2018, Dr. Daniel Cochran, a family practitioner, noted that appellant's condition remained unchanged since the July 15, 2018 visit.

Magnetic resonance imaging (MRI) scans performed on July 25, 2018 revealed mild lumbar spondylotic changes without significant central canal stenosis or evidence of acute lumbar spine fractures, spondylolysis or large disc herniations.

In a report dated July 30, 2018, Dr. Beth Lanning, an osteopath and medicine family practitioner, noted that appellant complained of low back pain which radiated to the right thigh following a work injury. She performed a physical examination and documented right-sided

³ OWCP previously accepted appellant's March 3, 2012 traumatic injury claim for intervertebral disc disorders, radiculopathy, lumbar region, and sprain of lumbosacral (joint) (ligament), among other conditions, under OWCP File No. xxxxxx550. It also accepted an April 28, 2013 traumatic injury claim for sprain of back, lumbar region under OWCP File No. xxxxxx871. Subsequently, OWCP administratively combined these claims with the former serving as the master file. OWCP has not administratively combined the current claim, File No. xxxxxx587, with the aforementioned claims.

paraspinal lumbar spasm. Dr. Lanning diagnosed acute midline low back pain without sciatica and lumbar radicular pain.

In a report dated August 7, 2018, Dr. Esaias Giorgis, a Board-certified occupational medicine specialist, indicated that appellant related a history of low back pain due to pushing a heavy object at work on July 15, 2018. He performed a physical examination and found pain with range of motion. Dr. Giorgis diagnosed acute midline low back pain without sciatica.

In a follow-up visit dated August 13, 2018, Dr. Lanning recommended an orthopedic consultation.

In his August 22, 2018 medical report, Dr. Stephane Lavoie, a Board-certified orthopedic surgeon, noted that appellant related a history of twisting her back while at work on July 15, 2018. He performed a physical examination and documented that appellant complained of pain with forward flexion of the back. Dr. Lavoie reviewed the July 25, 2018 MRI scan, and found multilevel disc degeneration, which was slightly worse at L4-5, but no disc herniation or stenosis. He diagnosed a sprain of the ligaments of the lumbar spine and intervertebral disc degeneration of the lumbar spine. Dr. Lavoie recommended physical therapy and modified-duty work.

By decision dated September 4, 2018, OWCP accepted that the July 15, 2018 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted any medical evidence containing a diagnosis in connection with the accepted employment incident. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

Thereafter, OWCP received an August 30, 2018 physical therapy report. It also received an updated statement from appellant dated September 10, 2018, indicating that on July 15, 2018 she felt back pain after putting empty casters into the flat sequencing system machine.

In a September 19, 2018 follow-up visit, Dr. Lavoie noted that appellant's lumbar pain was improving with therapy.

On October 4, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 15, 2019.

By decision dated May 31, 2019, OWCP's hearing representative modified the September 4, 2018 decision, finding that appellant had established a medical diagnosis in connection with the accepted July 15, 2018 employment incident. However, the claim remained denied, because the evidence of record was not sufficient to establish a causal relationship between the accepted July 15, 2018 employment incident and her diagnosed lumbar conditions.

OWCP received duplicate copies of the July 25, 2018 lumbar MRI scan.

On May 31, 2020 appellant, through counsel, requested reconsideration of the May 31, 2019 decision.

By decision dated June 4, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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 When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a 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).

On May 31, 2020 appellant filed a timely request for reconsideration of OWCP's May 31, 2019 decision.⁹ The Board finds, however, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁰

In support of her request for reconsideration, appellant did not submit any new medical evidence. The underlying issue in this case is causal relationship, which is medical in nature, and she did not submit any pertinent new and relevant medical evidence not previously considered by OWCP. Although OWCP received an additional copy of the July 25, 2018 lumbar MRI scan, the Board has held, the submission of additional evidence that either repeats or duplicates information

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ *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.

⁷ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

⁸ *Id.* at § 10.608.

⁹ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁰ *Id.* at § 10.606(b)(3); *see also C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

already in the record does not constitute a basis for reopening a claim.¹¹ Therefore, appellant is not entitled to further review of the merits of her claim based on the third requirement under section 10.606(b)(3).¹²

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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 June 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 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

¹¹ *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *P.L.*, Docket No. 18-1145 (issued January 4, 2019); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Annette Louise*, 54 ECAB 783 (2003); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹² *See* 20 C.F.R. § 10.606(b)(3)(iii).