

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

A.N., Appellant)	
)	
and)	Docket No. 22-0617
)	Issued: August 26, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Hartford, CT, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 21, 2022 appellant filed a timely appeal from an October 27, 2021 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 6, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (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).

FACTUAL HISTORY

On December 8, 2020 appellant, then a 52-year-old manager of the post office operations, filed an occupational disease claim (Form CA-2) alleging that she developed low back and bilateral

¹ 5 U.S.C. § 8101 *et seq.*

knee conditions due to factors of her federal employment, including excessive walking, and monitoring operations and automation. She noted that she first became aware of her condition on May 7, 2018 and realized its relation to her federal employment on July 1, 2018. Appellant stopped work on November 18, 2020.

In a report dated December 11, 2020, Dr. James E. Seely, a family medicine specialist, related that he had been treating appellant's back and knee pain for several years. He concluded that it was likely that the physical demands of her job caused these conditions to worsen over the years.

By decision dated February 1, 2021, OWCP accepted the implicated employment factors, but denied appellant's claim as the medical evidence did not establish a diagnosis causally related to the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 19, 2021 appellant requested reconsideration and submitted medical evidence. OWCP received progress notes dated from December 14, 2020 from Jon Lum, a physician assistant. In a report dated January 20, 2021, Dr. Dwight Ligham, Board-certified in anesthesiology and pain medicine, related that he initially saw appellant on May 1, 2019 and diagnosed lumbar degenerative disc disease. He opined that appellant's pain and disability related to her low back and leg were related to her work activities, which required extensive prolonged and repetitive walking, bending, and lifting.

In a report dated January 21, 2021, Dr. Seely noted that appellant had been diagnosed with degenerative disc disease. He reiterated his opinion that the physical demands of appellant's position contributed to her condition and aggravated her symptoms.

By decision dated May 19, 2021, OWCP modified its prior decision, finding that appellant had submitted medical evidence containing a diagnosis of degenerative disc disease, but that the evidence did not establish a causal relationship between the accepted employment factors and the diagnosed medical condition.

Appellant requested reconsideration on July 15, 2021. OWCP received an additional report from Dr. Seely dated June 29, 2021. Dr. Seely noted diagnoses of lumbar degenerative disc disease with neuropathy and lumbar annular tear. He concluded that appellant's pain and disability were related to her on-the-job activities, which required extensive, prolonged, repetitive walking, bending, and lifting.

By decision dated August 6, 2021, OWCP denied modification of the May 19, 2021 decision.

On October 19, 2021 appellant requested reconsideration of the August 6, 2021 decision. She did not offer any argument or submit any evidence in support of the request for reconsideration.

By decision dated October 27, 2021, 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 own motion or on application.²

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.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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 August 20, 2020 appellant requested reconsideration; however, she did not offer a legal argument. Therefore, she 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.

² *Id.* at § 8128(a); *see R.D.*, Docket No. 21-0472 (issued December 2, 2021); *A.M.*, Docket No. 20-1417 (issued July 30, 2021); *J.D.*, Docket No. 19-1757 (issued April 15, 2020); *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).

³ 20 C.F.R. § 10.606(b)(3); *see A.M., id.; J.D., id.; 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).

⁴ *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 the merit 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.

⁵ *Id.* at § 10.608(a); *see also A.M., supra* note 2; *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b).

Consequently, appellant 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).⁷

Furthermore, appellant did not submit any evidence with her reconsideration request. As she has not provided relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁸ The Board, accordingly, 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 October 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁷ *Supra* note 3 at § 10.606(b)(3)(i) and (i); *see M.L.*, Docket No. 22-0120 (issued May 12, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁸ *Supra* note 3 at § 10.608(b); *S.Q.*, Docket No. 20-1208 (issued May 4, 2021); *M.P.*, Docket No. 20-0814 (issued January 26, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).