

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

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B.T., Appellant)	
)	
and)	Docket No. 22-0006
)	Issued: December 28, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 1, 2021 appellant filed a timely appeal from an August 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated December 23, 2020, 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 November 2, 2020 appellant, then a 28-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2020 she sustained an abrasion and scratches of

¹ 5 U.S.C. § 8101 *et seq.*

the left thigh/upper leg when she was shot several times with a paintball gun while in the performance of duty. She stopped work on October 30, 2020.

In a statement dated October 30, 2020, appellant asserted that on the date of injury, while delivering mail, someone inside of a car shot her with a paintball gun, hitting her arm, back, and thigh, which caused severe bruising, stinging, and burns. She related that she believed the gun was real.

In a development letter dated November 17, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A police report dated October 30, 2020 noted that appellant was involved in an incident involving a firearm on October 30, 2020 at 7:04 p.m.

In a note dated November 5, 2020, Kathy Abbott, Psy.D., a licensed clinical psychologist, noted that she had previously treated appellant in early 2018 after her boyfriend was shot to death in her car. She related that appellant developed post-traumatic stress disorder (PTSD) following this incident. Dr. Abbott related that on November 4, 2020 appellant returned for counseling after she was shot several times by a paintball gun while on her delivery route. Appellant related that she believed the gun was real and that she was going to die, which lead to a recurrence of PTSD. Dr. Abbott held appellant off work.

A November 12, 2020 note from Dr. Abbott recounted the details of the October 30, 2020 employment incident and reiterated that appellant suffered from PTSD due to a prior incident involving a gun. Dr. Abbott diagnosed acute stress disorder, generalized anxiety disorder, and major depressive disorder. She continued to hold appellant off work.

In a duty status report (Form CA-17) dated November 13, 2020, Dr. Abbott described the October 30, 2020 incident involving appellant being shot at repeatedly and fearing for her life. She diagnosed severe depression, anxiety, and acute stress disorder.

In a letter dated December 2, 2020, Dr. Abbott noted that she began treating appellant weekly beginning on November 4, 2020. She recounted the details of the October 30, 2020 incident and again noted diagnoses of acute stress disorder, major depressive disorder, moderate, recurrent and generalized anxiety disorder. Dr. Abbott noted that appellant's condition was improving and released her to light-duty part-time work beginning December 1, 2022 and full-time work with restrictions beginning December 15, 2020.

In a December 4, 2020 response to OWCP's development questionnaire, appellant related that on October 30, 2020 someone pulled up in a car and shot her several times with a paintball gun, causing her to fall to the ground. She detailed a history of PTSD related to a prior incident involving a gun.

By decision dated December 23, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not established that her diagnosed medical condition was causally related to the accepted October 30, 2020 employment incident.

On August 8, 2021 appellant timely requested reconsideration of OWCP's December 23, 2020 decision and provided a duplicate copy of the October 30, 2020 police report previously of record.

By decision dated August 26, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim.

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 payment of 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 also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP 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

² 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see D.G., 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 OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 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). Chapter 2.1602.4b.

⁵ *Id.* at § 10.608(a); *D.G., supra* note 2; *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007)

⁶ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

Appellant's timely August 8, 2021 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. 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

Appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. In support of her request, she resubmitted copy of an October 30, 2020 police report previously of record. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case and, thus, these reports are also insufficient to warrant a merit review.⁸ As appellant did not provide 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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied appellant's request for reconsideration of the merits of the claim.

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).

⁷ See *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁸ *Id.*; *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board