

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

G.T., Appellant)	
)	
and)	Docket No. 21-0863
)	Issued: February 18, 2022
U.S. POSTAL SERVICE, GRAND SHELBY STATION, Detroit, MI, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2020 appellant filed a timely appeal from a June 30, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated December 4, 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 to review the merits of this case.

¹ The Board notes that, following the June 30, 2020 decision, OWCP received additional evidence. 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.*

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 his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ The facts as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 12, 2015 appellant, then a 59-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on June 11, 2013, he injured his lower back lifting tubs and twisting while in the performance of duty.⁴ He stopped work on June 11, 2013 and returned to regular duty on June 18, 2013. Appellant retired in July 2013. On June 8, 2015 OWCP assigned File No. xxxxxx197 and accepted this claim for lumbar strain.

On February 27, 2016 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated July 13, 2016, OWCP denied his schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body as a result of his accepted June 11, 2013 employment injury.

On March 20, 2017 appellant requested reconsideration of the July 13, 2016 decision. By decision dated May 22, 2017, OWCP denied his March 20, 2017 request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed the May 22, 2017 decision to the Board. By decision dated May 11, 2018, the Board affirmed OWCP's May 22, 2017 decision finding that his reconsideration request did not meet any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3) sufficient to require further review of the merits of his claim.

On August 29, 2019 appellant filed a Form CA-7 claiming a schedule award.

In a September 13, 2019 development letter, OWCP noted appellant's accepted conditions of lumbar strain and sciatica. It further noted that he had not provided medical evidence of permanent impairment in support of his schedule award claim. OWCP requested a detailed narrative medical report addressing whether appellant's accepted conditions had reached maximum medical improvement and whether he had any permanent impairment of a scheduled

³ Docket No. 18-0158 (issued May 11, 2018).

⁴ Appellant has a prior claim assigned OWCP File No. xxxxxx767, wherein he alleged on December 31, 2009 he injured his lower back while unloading tubs of mail from a postal vehicle while in the performance of duty. OWCP accepted that claim for sciatic of the lower back. Appellant had initially filed a notice of recurrence (Form CA-2a) under File No. xxxxxx767, noting that a recurrence occurred on June 11, 2013. OWCP did not adjudicate the recurrence claim and he, instead filed a new traumatic injury claim. It assigned the new traumatic injury claim OWCP File No. xxxxxx197, the subject of this appeal. OWCP has administratively combined the claims, with OWCP File No. xxxxxx197 serving as the master file.

member in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

By decision dated December 4, 2019, OWCP denied appellant's claim for a schedule award, finding that there was no medical evidence to establish that he sustained permanent impairment to a scheduled member or function of the body.

On June 1, 2020 appellant requested reconsideration of the December 4, 2019 decision. He provided a narrative statement noting that he continued to seek treatment for his accepted conditions, but was unable to secure a physical examination due to the COVID-19 pandemic.

By decision dated June 30, 2020, OWCP denied appellant's request for reconsideration of the merits of his 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

⁵ A.M.A., *Guides*, 6th ed. (2009).

⁶ 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).

⁷ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *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 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.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

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 his claim pursuant to 5 U.S.C. § 8128(a).

OWCP previously denied appellant's schedule award claim because the medical evidence of record was insufficient to establish permanent impairment of scheduled member or function of the body, warranting a schedule award. Thus, the Board must determine if he presented sufficient evidence or argument regarding his schedule award claim to warrant a merit review pursuant to 5 U.S.C. § 8128(a).¹¹

In his June 1, 2020 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that he is 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 his reconsideration request, he provided a narrative statement asserting that due to the COVID-19 pandemic he was unable to obtain the medical evidence necessary to establish his schedule award claim. This statement is not relevant to appellant's underlying schedule award claim, which must be established by medical evidence.¹³ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ Thus, appellant is not entitled to a review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁵

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁶

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *See H.T.*, Docket No. 20-1318 (issued April 27, 2021).

¹² *Supra* note 7.

¹³ *See A.M.*, Docket No. 20-1417 (issued July 30, 2021).

¹⁴ *Id.*; *see also Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁵ *Supra* note 7; *see S.M.*, Docket No. 21-0392 (issued August 12, 2021); *T.H.*, Docket No. 18-1809 (issued May 23, 2019); *Johnny L. Wilson*, Docket No. 98-2536 (issued February 13, 2001).

¹⁶ *H.T.*, Docket No. 20-0799 (issued November 6, 2020); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2022
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