

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

S.M., Appellant)	
)	
and)	Docket No. 21-1028
)	Issued: February 7, 2022
DEPARTMENT OF THE AIR FORCE, ALTUS)	
AIR FORCE BASE, Altus, OK, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 21, 2021 appellant filed a timely appeal from a February 10, 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 December 8, 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.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 10, 2021 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On October 1, 2020 appellant, then a 30-year-old fire protection and prevention specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 1, 2020 she sprained the anterior talofibular ligament (ATFL) of her left ankle when she lost feeling and blood flow as she was stepping down from a bunkroom bed while in the performance of duty. She stopped work on the date of injury.

In a visit summary dated October 1, 2020, Dr. Jentry McLaughlin, a Board-certified emergency medicine specialist, noted a diagnosis of sprain of the ATFL of the left ankle. He recommended that appellant continue to administer ice and compression, take anti-inflammatory medication, and avoid any strenuous activity for the next 24 hours.

In a letter dated October 2, 2020, Dr. Elvira Tolentino, a family physician, noted a diagnosis of severe left foot sprain and advised that appellant remain off from work for two weeks beginning October 5 through 18, 2020.

In a subsequent letter dated October 15, 2020, Dr. Tolentino recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the left ankle. She diagnosed a severe left foot and left ankle sprain. Dr. Tolentino advised that she remain out of work until November 2, 2020, pending the MRI scan results.

OWCP, in an October 21, 2020 development letter, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated December 8, 2020, OWCP accepted that the October 1, 2020 employment incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence submitted was insufficient to establish causal relationship between the accepted October 1, 2020 employment incident and her diagnosed left foot and ankle conditions.

On January 7, 2021 appellant requested reconsideration of the December 8, 2020 decision.

By decision dated February 10, 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.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a

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

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 January 7, 2021 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Accordingly, 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).⁸

In support of her request for reconsideration, appellant did not submit any pertinent new and relevant medical evidence. The underlying issue in this case is causal relationship, which is medical in nature and, therefore, can only be addressed by submission of rationalized medical evidence from a qualified physician. Therefore, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

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.

⁴ 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).

⁵ *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). Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *J.V.*, Docket No. 21-0252 (issued September 23, 2021); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See J.V., id.*; *C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, *supra* note 4.

⁹ *Id.*

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 February 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board