

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

C.Y., Appellant	)	
	)	
and	)	<b>Docket No. 21-1049</b>
	)	<b>Issued: February 1, 2022</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Dallas, TX, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 7, 2021 appellant filed a timely appeal from a May 4, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from OWCP's last merit decision, dated June 9, 2020, to the filing of this appeal, pursuant to the

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<sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued a June 23, 2021 decision, which again denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. § § 501.2(c)(3), 10.626; *see C.G.*, Docket No. 20-0784 (issued May 11, 2021); *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Alternate Member, Groom concurring in part and dissenting in part); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's March 16, 2020 decision is set aside as null and void.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

### **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**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On April 27, 1988 appellant, then a 27-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she was robbed and raped by an unknown assailant while in the performance of duty. OWCP accepted the claim for post-traumatic stress disorder, anxiety, and depression.

On April 16, 2002 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a May 30, 2002 decision, OWCP denied appellant's claim for a schedule award, finding that she had not submitted evidence establishing permanent impairment of a scheduled member or function of the body. It also explained that there was no provision under FECA for payment of a schedule award due to permanent impairment from a psychological condition. On July 22, 2002 appellant filed an appeal from the May 30, 2002 decision. In a December 17, 2002 decision, the Board affirmed OWCP's May 30, 2002 decision.<sup>5</sup> The Board found that under FECA and its implementing regulations there was no provision entitling a claimant to a schedule award for an accepted psychiatric condition.

On October 15, 2007 appellant filed another Form CA-7 claim for a schedule award. In a letter dated November 9, 2007, OWCP again advised appellant that, because her claim was only accepted for an emotional condition, she was not entitled to a schedule award.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

<sup>4</sup> Docket No. 14-1175 (issued October 27, 2014); Docket No. 13-1316 (issued December 12, 2013); Docket No. 11-2102 (issued April 6, 2012), *petition for recon. denied*, Docket No. 11-2102 (issued July 21, 2012); Docket No. 05-1805 (issued October 2, 2006); Docket No. 02-1971 (issued December 17, 2002).

<sup>5</sup> Docket No. 02-1971 (issued December 17, 2002).

On January 8 and 15, 2019 appellant again filed Form CA-7 claims for a schedule award.

In a letter dated January 17, 2019, OWCP informed appellant that, in order to receive a schedule award, the medical evidence must support a finding that the accepted injury resulted in a permanent impairment involving total or partial loss of use of a member or function of the body listed in 5 U.S.C. § 8107 or 20 C.F.R. § 10.404. It informed appellant that no action could be taken on her claim for a schedule award.

On March 9, 2019 appellant filed another Form CA-7 schedule award claim.

In support of her claim, appellant resubmitted an April 2, 2003 report from Dr. A.J. Morris, a family physician, who referred to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)<sup>6</sup>, and opined that appellant had five percent permanent impairment due to her accepted PTSD condition.

By decision dated January 23, 2020, OWCP denied appellant's schedule award claim. It again found that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body pursuant to 5 U.S.C. § 8107.

On February 28, April 3, and May 13, 2020 appellant requested reconsideration. By decisions dated March 25, April 13, and June 9, 2020, OWCP denied modification of its prior decisions.

On May 13, 2020 appellant requested reconsideration. By decision dated June 9, 2020, OWCP denied modification. It again found that the medical evidence of record did not support a permanent impairment of a scheduled member or function of the body pursuant to 5 U.S.C. § 8107.

On November 23, 2020 appellant again requested reconsideration. By decision dated November 30, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

On April 21, 2021 appellant again requested reconsideration.

By decision dated May 4, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim under 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.<sup>7</sup>

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<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>7</sup> 5 U.S.C. § 8128(a); *see A.A.*, Docket No. 20-1564 (issued August 30, 2021); *J.C.*, Docket No. 20-0614 (issued February 10, 2021); *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).

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.<sup>8</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>9</sup> If it chooses to grant reconsideration, OWCP reopens and reviews the case on its merits.<sup>10</sup> 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.<sup>11</sup>

### 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).

The underlying issue in this case is whether appellant has established entitlement to a schedule award for her accepted conditions of PTSD, anxiety, and depression. Appellant's June 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 she did not advance a relevant legal argument not previously considered by OWCP. Appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

The Board further finds that appellant has not provided any relevant and pertinent new evidence in support of her request for reconsideration. As appellant failed to provide relevant and

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<sup>8</sup> 20 C.F.R. § 10.606(b)(3); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>9</sup> *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 (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.

<sup>10</sup> 20 C.F.R. § 10.608(a); *D.J.*, Docket No. 21-0371 (issued November 24, 2021); *see also M.S.*, 59 ECAB 231 (2007).

<sup>11</sup> *Id.* at § 10.608(b); *D.J.*, *id.*; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>12</sup> *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).

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).<sup>13</sup>

The Board accordingly finds that appellant did not meet any of the requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>14</sup>

**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 May 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2022  
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

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<sup>13</sup> *P.S.*, *id.*; *see also G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>14</sup> *M.O.*, 21-0459 (issued December 29, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).