

³ The Board notes that, following the February 17, 2021 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.*

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 March 29, 2018 appellant, then a 42-year-old part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2018 she sustained pain in her neck, low back, and right knee when pushing a heavy package while in the performance of duty. OWCP accepted the claim for a contusion of the neck, a contusion of the lower back and pelvis, and bilateral knee contusions.

In a treatment note dated June 7, 2018, Dr. Nnamdi Nwabueze, a Board-certified internist, advised that appellant had been under his care from May 23 through June 26, 2018 and could return to work on June 27, 2018. In a narrative report of even date, he discussed appellant's history of a March 20, 2018 work injury to her neck, back, and knees. Dr. Nwabueze diagnosed contusions of the neck, low back, and bilateral knees. He noted that appellant had not resumed work and that her claim for an employment injury had not been approved.

On July 12, 2018 Dr. Nwabueze indicated that appellant required an excuse from work for the period June 24 until July 17, 2018. He diagnosed contusions of the lower back, neck, and right knee. In a certificate to return to work note of even date, Dr. Nwabueze advised that he had treated appellant for pain in her back, neck, and knee from June 27 to July 17, 2018 and that she could return to work on July 18, 2018.

On July 17, 2018 Dr. Alan C. Schroeder, a Board-certified orthopedic surgeon, reviewed appellant's history of a March 2018 fall at work and continued complaints of right more than left knee pain. He diagnosed right knee effusion with probable internal derangement of the meniscus, right knee pain with mild osteoarthritis, left knee mild osteoarthritis that was generally asymptomatic, probable referred lumbar pain, and status post a slip and fall at work in March 2018. Dr. Schroeder found that appellant should remain off work pending diagnostic testing.

On August 2, 2018 appellant filed claims for wage-loss compensation (Form CA-7) for disability from work commencing May 21, 2018.

In a compensation claim development letter dated August 13, 2018, OWCP requested that appellant submit evidence supporting that she was temporarily totally disabled for the claimed period due to her accepted employment injury. It afforded her 30 days to submit the requested information.

On August 13, 2018 Dr. Schroeder diagnosed a right knee meniscus tear with components of osteoarthritis and ongoing effusion. He recommended a medial meniscectomy.

In a report dated August 14, 2018, Dr. Kevin P. McCarthy, a Board-certified orthopedic surgeon, noted that appellant was status post a work injury on March 20, 2018. He diagnosed low back pain with right radiculopathy, right knee mechanical symptoms, and cervicalgia with right radiculopathy.

OWCP paid appellant wage-loss compensation on the supplemental rolls from September 1 to November 10, 2018 and on the periodic rolls effective November 11, 2018.

By decision dated October 15, 2018, OWCP denied appellant's claim for wage-loss compensation from May 21, 2018 through August 31, 2018 causally related to her March 20, 2018 employment injury.

On October 10, 2018 appellant underwent a right knee partial meniscectomy and chondroplasty of the medial femoral condyle and patella and femoral trochlea.

Subsequently, OWCP received medical evidence dated November 2018 through October 2019 addressing appellant's current condition.

On October 13, 2019 appellant, through counsel, requested reconsideration of OWCP's October 15, 2018 decision. He advised that he was submitting new evidence supporting entitlement to wage-loss compensation due to disability for the claimed period.

By decision dated February 11, 2020, OWCP denied modification of its October 15, 2018 decision.

Thereafter, OWCP received medical evidence dated November 19, 2019 through October 8, 2020 addressing appellant's current condition.

On December 1, 2020 OWCP expanded its acceptance of appellant's claim to include an aggravation of right knee osteoarthritis. It advised that her claim had also been accepted for a medial meniscal tear of the right knee, lumbar intervertebral disc displacement, lumbar radiculopathy, right knee bursitis, other spondylosis with radiculopathy of the lumbar region, and an aggravation of unilateral primary osteoarthritis.

On February 10, 2021 appellant, through counsel, requested reconsideration. Counsel asserted that OWCP should reanalyze its denial of her request for wage-loss compensation for the period prior to September 1, 2018 given that it had placed her on the periodic rolls shortly thereafter. He advised that appellant had submitted additional evidence supporting wage-loss compensation for the claimed period.

OWCP received the results of appellant's blood analysis obtained on January 14, 2021.

By decision dated February 17, 2021, OWCP denied appellant's request for reconsideration, finding that she had not submitted evidence or raised an argument sufficient to warrant reopening her claim for merit review 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.⁴

⁴ 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).

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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 reconsideration, counsel contended that OWCP should again evaluate her request for compensation prior to September 1, 2018 given that it had placed her on the periodic rolls shortly thereafter. However, this general assertion is insufficient to show a legal error by OWCP. The Board thus finds that appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. 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).⁹

With her request for reconsideration, appellant submitted medical reports from 2019 and 2020 addressing her current condition and the results of laboratory testing obtained on January 14, 2021. However, this evidence is not relevant to the underlying issue as it does not address whether she was disabled from work for the period May 21 to September 1, 2018. The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ The Board thus finds that appellant has not provided any relevant and pertinent new evidence not previously considered.

⁵ 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).

⁶ *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). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

¹⁰ *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Consequently, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

The Board, accordingly, finds that appellant did not meet 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.¹²

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 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 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

¹¹ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹² *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).