

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

_____)	
W.C., Appellant)	
)	
and)	Docket No. 21-1012
)	Issued: June 13, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Olney, IL, Employer)	
_____)	

Appearances:
*Joanne Marie Wright, for the appellant*¹
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 June 23, 2021 appellant, through his representative, filed a timely appeal from an April 29, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 17, 2020, 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 over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

On May 29, 1998 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced pain on his left side when carrying a mail satchel with a large volume of catalogs, magazines, and other mail while in the performance of duty. OWCP accepted the claim for umbilical hernia. Appellant stopped work on September 2, 1998 and returned on October 5, 1998 following surgical hernia repair. He again stopped work on June 29, 2011 for recurrent hernia repair.

On June 29, 2011 appellant underwent a repair of a recurrent umbilical hernia with ventralex patch, as his umbilical hernia had recurred just above the preexisting mesh patch. He was released to return to full duty in August 2011.

On January 20, 2020 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of his accepted hernia condition on September 1, 2018 requiring additional surgery. He retired on September 30, 2018.

Appellant provided an undated narrative statement, received on January 31, 2020, noting in September 2018 he underwent emergency exploratory surgery as adhesions from his two previous umbilical hernia repairs had twisted his bowels. He asserted that he currently had a two by three inch section near his umbilicus that bulged. Appellant requested additional surgery to repair this bulge.

On September 11, 2018 appellant underwent an exploratory laparotomy and lysis of adhesions due to complete high-grade small bowel obstruction. Dr. Stephen E. Reid, a Board-certified surgeon, noted that during the surgery he encountered mesh and that adhesions had developed to the mesh and between the loops of bowels causing them to twist. He removed the adhesions. Dr. Reid reported no other bowel obstructions.

In a September 27, 2018 report, Dr. Reid found that appellant had bowel obstruction with a resulting exploratory laparotomy and lysis of adhesions on September 11, 2018. He found that appellant was totally disabled.

In a February 10, 2020 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from appellant and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated March 17, 2020, OWCP denied appellant's claim for recurrence of disability on January 20, 2020, finding that the medical evidence of record was insufficient to establish his September 11, 2018 surgery was caused or contributed to by any of his work activities associated with his May 29, 1998 employment injury or was a consequential injury. It noted that there was no explanation from appellant's physician on the specific work activity/duty that caused the change in his work-related condition. OWCP further found that the medical evidence did not

explain how the consequential injury was related to appellant's employment injury. Therefore, appellant's claim for recurrence was denied as he had "not established that [he] had a return of disability/increased disability as a result of a consequential injury/condition (stemming from [his] accepted work[-]related conditions)."

On March 15, 2021 appellant requested reconsideration of the March 17, 2020 decision. He contended that his September 11, 2018 surgery was required due to adhesions that formed following his accepted umbilical hernia repairs with mesh. Appellant further contended that the September 11, 2018 surgical report provided the causal relationship between the scar tissue that developed as a result of the prior hernia surgeries and the need for emergency exploratory surgery. He asserted that he had sustained a consequential injury as a result of his authorized employment-related surgeries.

By decision dated April 29, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that he had not provided relevant legal argument or new evidence not previously considered by OWCP.

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.³

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.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

³ 5 U.S.C. § 8128(a); *see K.N.*, Docket No. 20-1188 (issued July 20, 2021); *see 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).

⁴ 20 C.F.R. § 10.606(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *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). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a). *See also D.P.*, Docket No. 19-0001 (issued June 13, 2019); *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.⁷

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).

Appellant's timely request for reconsideration on March 15, 2021 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. Rather, appellant reiterated his argument that his small bowel obstruction and resulting surgery was caused by mesh used in his two accepted surgical umbilical hernia repairs, which resulted in adhesions and, thus, was a consequential injury of his accepted condition. His argument was substantially similar to that which was previously considered and discussed in OWCP's March 17, 2020 decision. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. As he did not provide relevant and pertinent new evidence, appellant is not entitled to a merit review based on the third requirement under section 10.606(b)(3).⁹

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.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim.

⁷ *Id.* at § 10.608(b); *S.M.*, Docket No. 18-1158 (issued January 16, 2019); *J.F.*, Docket No. 17-1508 (issued March 28, 2018); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see T.S.*, Docket No. 20-0986 (issued August 17, 2021); *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁹ *Id.* at § 10.606(b)(3)(iii); *J.G.*, Docket No. 21-1192 (issued March 14, 2022); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁰ *Id.*; *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 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