

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

S.A., Appellant)	
)	
and)	Docket No. 22-0289
)	Issued: June 23, 2022
U.S. POSTAL SERVICE, RIO GRANDE)	
PERFORMANCE CLUSTER, San Antonio, TX,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the Appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 17, 2021 appellant, through counsel, filed a timely appeal from a December 14, 2021 nonmerit decision of the Office of Workers' Compensation Programs

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.

(OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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 June 25, 2021 appellant, then a 43-year-old distribution window clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2021 she developed de Quervain's tenosynovitis of the left wrist after lifting a heavy and unevenly weighted parcel that slipped out of her hand while in the performance of duty. On the reverse side of the form, the employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on June 19, 2021 and returned to work on June 21, 2021.

On June 29, 2021 appellant accepted an offer of modified assignment (limited duty), as a sales distribution associate with physical restrictions of standing, walking, and sitting for up to eight hours per day.

In a development letter dated July 6, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On June 25, 2021 appellant was treated by Dr. Brian Raimondo, a Board-certified family medicine physician, who related that on June 19, 2021 she felt a "pop" after she lifted a heavy package with her left wrist and placed it in a bin while distributing packages to carriers. Dr. Raimondo further noted that she complained of persistent pain at the radial and ulnar aspects of the left wrist. In a return to work note of even date, he released appellant to work with restrictions of no lifting over five pounds through July 1, 2021.

In a July 1, 2021 report, Dr. Raimondo noted that appellant presented in follow up for a left wrist and hand injury that occurred at work on June 19, 2021 when she was lifting heavy packages. He related that she had not seen improvement in her symptoms with the use of a splint,

² The Board notes that counsel did not appeal from August 12 and November 12, 2021 merit decisions. Counsel only identified the December 14, 2021 nonmerit decision on the application for review (Form AB-1). Therefore, the Board will not consider the August 12 and November 12, 2021 merit decisions on this appeal. *See* 20 C.F.R. § 501.3; *see also D.E.*, Docket No. 21-0531 (issued June 16, 2021).

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the December 14, 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.*

medication and home exercise. In a return to work note of even date, Dr. Raimondo advised that appellant could return to work on July 1, 2021 with restrictions of no repetitive motions, mail sorting, or lifting over two pounds.

In a duty status report (Form CA-17) dated July 8, 2021, Dr. Daniel Beltran, a chiropractor, provided a description of injury that on June 19, 2021 appellant was pitching packages when a package slipped from her hand, and she experienced pain in her left hand when she picked up the package. He diagnosed left wrist and forearm pain with limited strength. In a return to work note of even date, Dr. Beltran held appellant off work from July 8 through August 17, 2021.

In a medical report dated July 8, 2021, Dr. Melissa Kempf, a Board-certified family medicine physician, noted that appellant presented with pain in the left wrist radiating into the thumb. She related that the pain began on June 19, 2021 while appellant was throwing packages into bins at work. Dr. Kempf diagnosed a sprain and noted appellant's history of bilateral carpal tunnel syndrome (CTS). She opined that appellant's condition was that of a work-related sprain likely caused by overuse due to daily repetitive movements of tossing and sorting packages, particularly on June 19, 2021.

In a medical report dated July 28, 2021, Dr. Kempf noted that a magnetic resonance imaging (MRI) scan revealed mild degeneration at the base of the thumb with no fractures. She related that appellant had not experienced improvement of her pain symptoms with prescribed medication.

On August 6, 2021 the employing establishment noted that appellant's date of injury was February 12, 2020 and that she had accepted a modified job offer on June 29, 2021. It further indicated that she had been placed on temporary total disability status since July 8, 2021. In a diagnostic report of July 8, 2021, Dr. Michael Kim, a Board-certified radiologist, performed a computerized tomography scan of the left wrist, which revealed stippled lucencies in the capitate.

By decision dated August 12, 2021, OWCP denied appellant's claim, finding that she had not established that the June 19, 2021 incident occurred, as alleged. It noted that she had not completed and returned the questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

In Part B of an authorization for examination and/or treatment (Form CA-16) dated June 25, 2021, Dr. Raimondo stated that appellant was first examined on June 23, 2021. He diagnosed left wrist sprain as a result of lifting packages.

On September 2, 2021 appellant requested reconsideration of OWCP's August 12, 2021 decision.

In a diagnostic report dated July 23, 2021, Dr. Kim performed an MRI scan of appellant's left wrist, which revealed mild degenerative changes at the first joint and a bone contusion.

On August 23, 2021 appellant responded to OWCP's development questionnaire, explaining that, on the alleged date of injury, she was diagnosed with a strain after a heavy box slipped from her hand while pitching parcels. She asserted that she did not sustain any other injury and that her preexisting CTS was unrelated to the alleged employment incident.

In a medical report dated September 8, 2021, Dr. Adham Abdelfattah, a Board-certified orthopedic surgeon, related that appellant experienced left wrist pain on June 19, 2021 while sorting mail. He noted that she had received steroid injections for her preexisting condition of CTS. Dr. Abdelfattah diagnosed pain and a strain of the left wrist and tenosynovitis.

On October 1, 2021 appellant was seen by Dr. Abdelfattah with ongoing complaints of left wrist pain. He related that her continued pain caused difficulty in completing work and daily activities.

By decision dated November 12, 2021, OWCP denied modification of its August 12, 2021 decision. It found that appellant had provided inconsistent statements regarding the mechanism of injury.

OWCP received duplicate copies of Dr. Kempf's July 8 and 28, 2021 medical reports.

In a Form CA-17 dated November 11, 2021, Dr. Beltran reiterated the alleged mechanism of injury on June 19, 2021 and repeated his previous diagnoses and medical findings.

On December 3, 2021 appellant requested reconsideration of OWCP's November 12, 2021 decision.

In a statement dated December 1, 2021, appellant explained that she was still unable to perform her work duties and continued to work in a light-duty capacity due to ongoing left wrist pain.

By decision dated December 14, 2021, OWCP denied reconsideration of the merits of appellant's claim.

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 payment of compensation at any time on his own motion or on application.⁵

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.⁶

⁵ 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *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).

⁶ 20 C.F.R. § 10.606(b)(3); *see D.G., id.; 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).

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

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 timely December 3, 2021 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. In support of her December 3, 2021 request for reconsideration, appellant submitted a December 1, 2021 statement where she asserted that she was still unable to perform her work duties and continued to experience left wrist pain. However, she did not describe the factual circumstances or provide a detailed account of the alleged injury or explain how the injury occurred. Thus, appellant has not raised any new or relevant legal arguments not previously considered. Consequently, she 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).¹⁰

The Board further finds that appellant did not submit any relevant and pertinent new evidence not previously considered. In support of her reconsideration request, appellant submitted a November 11, 2021 Form CA-17 from Dr. Beltran and duplicate copies of his July 8 and 21, 2021 reports. The Board finds that this evidence is not relevant to the underlying issue of whether she has established the factual component of her claim, specifically whether the alleged June 19, 2021 employment incident occurred, as alleged. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a

⁷ *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.

⁸ *Id.* at § 10.608(a); *D.G.*, *supra* note 5; *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *See R.L.*, Docket No. 20-1403 (issued July 21, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

basis for reopening a case.¹¹ Thus, appellant is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to 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.¹³

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).¹⁴

¹¹ See *A.M.*, Docket No. 20-1417 (issued July 30, 2021).

¹² 20 C.F.R. § 10.606(b)(3); 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).

¹³ *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).

¹⁴ The Board notes that the employing establishment issued a Form CA-16, dated June 25, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, sweeping initial "J".

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board