

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

_____)	
L.W., Appellant)	
)	
and)	Docket No. 21-0789
)	Issued: March 25, 2022
U.S. POSTAL OFFICE, POST OFFICE,)	
Canton, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2021¹ appellant filed a timely appeal from an October 7, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated August 19, 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.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from October 7, 2020, the date of OWCP's last decision, was April 5, 2021. Since using April 12, 2021, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. See 20 C.F.R. § 501.3(f)(1). As appellant's appeal request was postmarked April 1, 2021, the appeal is, therefore, timely.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the October 7, 2020 decision, OWCP received additional evidence and 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.*

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 January 24, 2020 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2020 she injured her right arm and shoulder when trying to catch a heavy package that slipped out of her hand while in the performance of duty. She stopped work on the date of injury.⁴

In support of her claim, appellant submitted hospital records, including a January 24, 2020 discharge summary and emergency department reports from Dr. Richard Miles, Board-certified in emergency medicine, who diagnosed right rotator cuff strain.

By decision dated March 6, 2020, OWCP accepted the claim for sprain of right rotator cuff capsule (right rotator cuff syndrome) and sprain of right acromioclavicular (AC) joint (right AC joint arthrosis). It paid appellant wage-loss compensation on the supplemental rolls from March 9 through April 28, 2020.⁵

In a March 27, 2020 initial report, Theresa Koerber, a field nurse OWCP assigned to appellant's claim, noted diagnoses of right rotator cuff syndrome and sprain of right acromioclavicular (AC) joint (right AC joint arthrosis).

In March 27 and April 3, 2020 letters and an April 6, 2020 work capacity evaluation for musculoskeletal conditions (Form OWCP-5c), Dr. William B. Geissler, a Board-certified orthopedic surgeon, advised that appellant could return to light-duty work with restrictions of no reaching overhead, pushing, pulling, or lifting over five pounds. He indicated that appellant received an injection to the right shoulder and was undergoing physical therapy treatment for her diagnosed rotator cuff syndrome. Dr. Geissler also provided restrictions limiting his work schedule to 6:00 a.m. to 6:00 p.m.

On May 15, 2020 the employing establishment offered appellant a limited-full-time position as a modified rural carrier, effective May 23, 2020. The duties included: surface visibility scanning for two to four hours per day and quality checks on mail transport equipment for four to seven hours per day. The tour of duty was from 9:30 p.m. to 6:00 a.m. The physical requirements included: no pulling or pushing over five pounds and no reaching overhead.

In a May 22, 2020 statement, appellant noted that she had concerns about her medical limitations and requested reasonable accommodation from the employing establishment. She

⁴ On January 24, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16).

⁵ On July 31, 2020 appellant filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx968 alleging that she reinjured her right shoulder when she fainted on June 26, 2020 while in the performance of duty. OWCP denied that claim, finding that the evidence of record was insufficient to establish the factual component of fact of injury. This claim is not presently before the Board. The Board notes that OWCP has not administratively combined these claims.

indicated that, pursuant to her doctors' recommendations, she was unable to report to work until her next appointment on May 27, 2020.

The employing establishment, in a May 26, 2020 letter, notified OWCP that appellant expressed concerns over her medical limitations and refused the offer of modified assignment.

In a May 26, 2020 note, Dr. Joe W. Terry, Board-certified in family practice, noted that appellant was on medication at night that made her drowsy and unable to drive or stay alert. He indicated that she could only work and drive between the hours of 6:00 a.m. and 6:00 p.m.

In a May 27, 2020 medical report, Dr. Geissler indicated that appellant had been undergoing physical therapy treatment. He conducted a physical examination and diagnosed right rotator cuff syndrome and AC joint arthrosis. Dr. Geissler advised that appellant could return to light-duty work with restrictions of no reaching overhead, pushing, lifting, or pulling more than 10 pounds. He also indicated that her primary doctor restricted her from working at night.

The employing establishment requested, in letters dated May 27 and 28, 2020, that OWCP determine whether the offered position was suitable. It noted that appellant provided medical documentation to negate the work hours identified on the offer of modified assignment and added restriction of lifting to the physical requirement.

OWCP paid appellant wage-loss compensation on the supplemental rolls from April 29 through May 8, 2020.

Appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 13 through June 3, 2020.

In a letter dated June 11, 2020, OWCP acknowledged receipt of appellant's Form CA-7 and advised her that it had processed a wage-loss compensation payment for the period May 13 through 22, 2020. It also noted that the employing establishment had offered appellant a modified temporary light-duty assignment on May 15, 2020, effective May 23, 2020, which she declined. OWCP informed her that the duties and physical requirements of the employing establishment's temporary light-duty assignment were within Dr. Geissler's April 3, 6, and May 27, 2020 work restrictions. It also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised that her entitlement to wage-loss compensation may be denied under this provision if she did not accept the offered assignment or provide a written explanation with justification for her refusal within 30 days. OWCP specifically requested appellant to submit evidence to support that the assignment was no longer available or no longer accommodated her medical restrictions.

Appellant filed a Form CA-7 for disability from work for the period June 4 through 17, 2020.

In a June 18, 2020 statement, appellant noted that she was distraught by her report time on her modified job offer because the medication she took at night caused drowsiness and dizziness. She contended that she signed the modified offer on May 21, 2020 and returned it to the address given. Appellant also contended that the employing establishment notified her that, per Dr. Geissler's recommendation, she was not to report to work until May 28, 2020.

On June 19, 2020 appellant accepted the offer of modified assignment as a limited-duty rural carrier.

In a June 26, 2020 letter, the employing establishment notified OWCP that appellant returned to work on June 25, 2020, but on June 26, 2020 she took a muscle relaxer due to her arm hurting and subsequently fainted while at work. It indicated that she was sent to a hospital. In a letter of even date, Lauren W. Buffington, a nurse practitioner, verified that appellant was seen in the emergency room that day and indicated that she could return to work with restrictions.

In a June 29, 2020 letter, Dr. Terry again noted that appellant was on medication at night that made her drowsy and unable to drive or stay alert. He indicated that she could only work and drive between the hours of 6:00 a.m. and 6:00 p.m. In a work status note of even date, Dr. Terry indicated that appellant could return to full-duty work on July 7, 2020 without restrictions.

Appellant filed a Form CA-7 for disability from work for the period June 21 through July 14, 2020.

In a July 22, 2020 development letter, OWCP acknowledged receipt of appellant's claim for wage-loss compensation beginning June 21, 2020 and advised that additional evidence was needed to establish disability from work during the claimed periods. It advised that the evidence indicated that a temporary light-duty assignment was available within appellant's medical restrictions with the employing establishment for the period of claimed lost time and requested evidence to support why she did not work the temporary light-duty assignment. OWCP afforded appellant 30 days to submit the requested medical evidence.

In a May 27, 2020 progress report, Ms. Koerber indicated that the employing establishment notified her that job duties within compliance of the recommended restrictions from Dr. Geissler were not available for appellant at this time.

In a June 26, 2020 progress report, Ms. Koerber noted that appellant had been released to return to limited-duty work on June 26, 2020.

In a July 20, 2020 medical report, Dr. Geissler noted appellant's complaint that her work duties require her to lean over pick up about 100 boxes out of bins, which aggravated and increased her right shoulder pain. Appellant also reported that her tasks made her dizzy. Dr. Geissler noted that in late June appellant took pain medication before passing out at work. He indicated that she had not been back at work since her fall.

In an August 10, 2020 memorandum of telephone call (Form CA-110), OWCP notified Ms. Koerber that appellant sustained a recurrence of disability on June 26, 2020, when she passed out at work and reinjured her right shoulder due to the medicine she was taking.

In an August 19, 2020 Form CA-110, OWCP notified Ms. Koerber that appellant filed a new injury claim for right shoulder injury that allegedly occurred on June 26, 2020 when she fainted at work.

By decision dated August 19, 2020, OWCP denied appellant's wage-loss compensation claim for disability from work, commencing May 23, 2020, pursuant to 20 C.F.R. § 10.500(a) based on her refusal to accept the employing establishment's May 15, 2020 offer for a temporary

light-duty assignment. It explained that the evidence established that she had medical restrictions in place, a light-duty work assignment within those restrictions was available to her, and she was previously notified in writing that such light-duty work was available.

On September 22, 2020 appellant requested reconsideration. Along with her request, she resubmitted copies of the January 24, 2020 hospital record, the March 27, 2020 progress report from Ms. Koerber, and the July 20, 2020 medical report from Dr. Geissler, as well as the signed offer of modified assignment.

Appellant also submitted progress reports dated July 26, August 25, and September 27, 2020 from Ms. Koerber. Ms. Koerber noted that appellant continued to experience right shoulder symptoms after the June 26, 2020 fall, when she reinjured her right shoulder. She indicated that Dr. Geissler had recommended that appellant remain off work.

By decision dated October 7, 2020, 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.⁶

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.⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

⁶ *Supra* note 1 at § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁷ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 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.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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 reconsideration request did not show that OWCP erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. In support of her reconsideration request, appellant submitted duplicative records, including a January 24, 2020 hospital record, March 27, 2020 progress report from the field nurse, and a July 20, 2020 medical report from Dr. Geissler, as well as her signed offer of modified assignment. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹² Thus, this evidence is insufficient to warrant a merit review.

Appellant also submitted progress reports dated July 26, August 25, and September 27, 2020 from Ms. Koerber, the field nurse. The underlying issue on reconsideration was whether she had met her burden of proof to establish disability from work during the period claimed causally related to her accepted work-related medical conditions. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵ As Ms. Koerber's reports do not constitute competent medical evidence, they are, therefore, irrelevant to the underlying merit issue. The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶ Therefore, appellant is not entitled to

¹¹ See *S.G.*, Docket No. 21-0067 (issued August 23, 2021); *K.F.*, Docket No. 19-1846 (issued November 3, 2020).

¹² *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Eugene F. Butler*, 36 ECAB 393 (1984).

¹³ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *M.P.*, Docket No. 19-1872 (issued April 15, 2020).

¹⁴ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁵ *Id.*

¹⁶ See *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁷

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.¹⁸

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).¹⁹

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ *Supra* note 7.

¹⁸ See *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

¹⁹ The Board notes that the employing establishment executed a Form CA-16. 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).