

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

P.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Annapolis, MD, Employer**

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**Docket No. 22-0983
Issued: November 9, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 13, 2022 appellant filed a timely appeal from a March 4, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 11, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 July 6, 2006 appellant, then a 43-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder tendinitis due to factors of

¹ 5 U.S.C. § 8101 *et seq.*

her federal employment, including repetitive upper extremity motion. She noted that she delivered mail from her personal vehicle and had to reach across the passenger seat to place mail in the mailbox on the right side of the street. Appellant indicated that she first became aware of her condition on June 26, 2006 and related it to her federal employment factors on July 5, 2006.

On October 17, 2006 OWCP accepted the claim for other and unspecified complications of medical care, right sprain of shoulder and upper arm, acromioclavicular joint on the left. It paid appellant intermittent wage-loss compensation on the supplemental rolls, commencing September 25, 2006, and on the periodic rolls, commencing September 30, 2007. She returned to part-time, limited duty on April 18, 2008 and full-time, limited duty on August 5, 2008. On April 29, 2009 OWCP granted appellant a schedule award for 25 percent permanent impairment of the left upper extremity. The period of the award ran for 78 weeks from March 19, 2009 to September 15, 2010.

By decision dated March 2, 2021, OWCP denied appellant's claim for disability from work for the period from October 10, 2020 and continuing.

On March 19, 2021 appellant filed claims for compensation (Form-CA-7) for disability from work for the period from November 23, 2019 through January 31, 2020.

In an encounter summary dated November 20, 2020, Amit Patel, a physician assistant, related that appellant was seen for follow up of chronic left shoulder pain following a June 26, 2006 injury. He noted that overhead movements aggravated appellant's pain. Mr. Patel diagnosed left shoulder joint pain, chronic pain syndrome, and left elbow joint pain.

In a February 11, 2021 progress note, Mr. Patel noted that appellant had been a long-standing patient. On November 23, 2019 he had advised appellant that she should not work for more than four hours per day as her pain was significantly worsened by activities, especially lifting. Mr. Patel explained that there was no simple solution for her chronic shoulder joint pain.

In a March 11, 2021 treatment note, Mr. Patel diagnosed left shoulder joint pain, chronic pain syndrome, and pain of left elbow joint.

In a March 29, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claims for wage-loss compensation. It advised her of the type of medical evidence necessary to establish her disability claims and afforded her 30 days to submit the requested evidence.

OWCP continued to receive additional progress notes from Mr. Patel.

Appellant continued to submit Form CA-7 claims for wage-loss compensation due to disability from work through April 24, 2020.

By decision dated June 11, 2021, OWCP denied appellant's claims for disability from work for the period, commencing November 23, 2019 and continuing, because the medical evidence of record was insufficient to establish disability during the claimed period due to a worsening of her accepted employment-related conditions, such that she no longer was able to perform the duties of the position after she began working four hours per day.

On December 6, 2021 appellant requested reconsideration of the June 11, 2011 OWCP decision. In an undated narrative statement received on that date, she indicated that she had seen a specialist in Baltimore, Maryland, and that she continued to seek pain management treatment monthly.

Mr. Patel continued to submit treatment notes dated June 3 and 29, July 13, August 11, September 8, October 6, November 3, December 1 and 29, 2021, and January 26, 2022. He continued to note appellant's left shoulder joint pain and provided appellant prescription pain medication.

OWCP also received a copy of a June 29, 2021 COVID-19 screening form, as well as September 13, December 1 and 7, 2021 laboratory test results.

By decision dated March 4, 2022, 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.²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.³

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.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(a).

⁶ *Id.* at § 10.608(b).

Appellant's December 6, 2021 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Also, it did not advance a relevant legal argument not previously considered by OWCP. Consequently, 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).

With regard to the third requirement under 20 C.F.R. § 10.606(b)(3), submission of new evidence, the Board notes that appellant submitted a narrative statement in support of her reconsideration request. However, the underlying issue in this case is medical in nature. As such, medical evidence from a qualified physician is required.⁷ While the narrative statement indicated that appellant had seen physicians, she did not include any physician reports.

On reconsideration appellant continued to submit reports from Mr. Patel, a physician assistant. The Board has held that reports of a physician assistant are of no probative value, as physician assistants are not considered physicians as defined under FECA.⁸ The Board finds that submission of the physician assistant reports did not require reopening appellant's case for merit review because the reports have no probative value on the underlying issue on reconsideration.⁹ Furthermore, medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.¹⁰

OWCP also received copies of laboratory reports; however, the Board has held that diagnostic studies, standing alone, lack probative value and are not relevant and pertinent as they do not address whether appellant's employment duties caused a diagnosed condition.¹¹ Therefore, the laboratory reports do not constitute a basis for reopening the claim.¹²

⁷ See *J.F.*, Docket No. 22-0420 (issued July 19, 2022); *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *D.K.*, 59 ECAB 141 (2007).

⁸ Section 8101(2) of FECA provides that 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 also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physician assistant is not considered a physician as defined under FECA); *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).

⁹ *Id.*

¹⁰ See *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ See *R.G.*, Docket No. 19-1889 (issued April 14, 2021); *Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *S.D.*, Docket No. 18-1734 (issued March 12, 2019).

¹² *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *R.R.*, Docket No. 18-1562 (issued February 22, 2019); *K.B.*, Docket No. 18-1392 (issued January 15, 2019).

As appellant failed to submit relevant and pertinent new evidence from a physician regarding the underlying disability issue, she is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.

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 March 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2022
Washington, DC

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

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

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