

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

_____)
B.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Green River, WY, Employer)
_____)

Docket No. 22-0553
Issued: October 21, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2022 appellant filed a timely appeal from an October 7, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 14, 2020, 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 25, 2008 appellant, then a 49-year-old city carrier, filed a traumatic injury (Form CA-1) alleging that on July 21, 2008 she sustained injuries to the right side of her right foot when stepping out of her work vehicle and avoiding a broken bottle on the ground while in the performance of duty. She stopped work on July 25, 2008 and returned on August 1, 2008. OWCP accepted appellant's claim for right foot sprain and ruptured ligament and right foot tendinitis. Appellant worked intermittently and OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent periods of disability. On January 12, 2013 appellant stopped work again. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective January 22, 2013, and placed her on the periodic rolls, effective April 7, 2013.

By decision dated March 21, 2013, OWCP expanded the acceptance of appellant's claim to include right ankle peroneal tendon tear.

By decision dated August 7, 2014, OWCP again expanded the acceptance of appellant's claim to include complex regional pain syndrome (CRPS) of the right lower limb.

On January 31, 2020 OWCP received a November 19, 2019 letter by Dr. Charles Saltzman, a Board-certified orthopedic surgeon, who indicated that appellant had been under his care for several years due to a right ankle injury and subsequent development of CRPS. Dr. Saltzman provided examination findings and noted that appellant had reached maximum medical improvement (MMI). He opined that appellant had 100 percent permanent impairment of the right lower extremity.

By decision dated February 21, 2020, OWCP expanded the acceptance of appellant's claim to include right ankle sprain, right ankle tibiofibular ligament sprain, spontaneous rupture of the flexor tendons of the right ankle and foot, right ankle short Achilles tendon, right tibialis tendinitis, right causalgia of the lower limb, right ankle synovitis and tenosynovitis, and right ankle instability.

In a report dated February 27, 2020, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), opined that there was insufficient information within the case file to determine whether appellant had a permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

OWCP subsequently referred appellant to Dr. Terry A. Brown, a Board-certified internist, for a second opinion examination to determine the extent of employment-related permanent

² Docket No. 18-1427 (issued July 29, 2019).

³ A.M.A., *Guides* (6th ed. 2009).

impairment of the right lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. In a report dated August 18, 2020, Dr. Brown noted his review of the SOAF and the medical record. He indicated that appellant continued to complain of burning, stabbing pain and swelling sensation in her right foot. On physical examination of appellant's right ankle, Dr. Brown observed tenderness to palpation and hypersensitivity. Range of motion was limited. Dr. Brown referred to the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-15 (Complex Regional Pain Syndrome -- Lower Extremity Impairments), page 541, appellant had a class 2 impairment for the class of diagnosis (CDX) of CRPS, which resulted in a default value of 20 percent, based on objective criteria points greater than six points. After applying the net adjustment formula, he determined that appellant had no adjustment and concluded that appellant had 20 percent permanent impairment of the right lower extremity due to her accepted CRPS condition.

In a September 3, 2020 report, the DMA, Dr. Harris, noted his review of the SOAF and the medical record. He concurred with Dr. Brown's impairment rating of 20 percent permanent impairment of the right lower extremity.

By decision dated October 14, 2020, OWCP granted appellant a schedule award for 20 percent permanent impairment of the right lower extremity. The award ran for 57.6 weeks from September 1, 2015 through October 8, 2016.

Appellant subsequently submitted additional medical evidence. In a letter dated November 11, 2020, Dr. Saltzman indicated that appellant's impairment consisted of right lower extremity CRPS, recurrent right lower extremity spasticity, autonomic dysfunction, dysesthesias, hyperesthesia, chronic pain, and decreased function. He opined that appellant should be considered permanently medically disabled.

In progress notes dated November 18, 2020 through March 3, 2021, Dr. Carina M. Jackman, a Board-certified anesthesiology and pain management specialist, noted appellant's complaints of right foot pain beginning in 2008. On initial examination of appellant's right lower extremity, she observed slight mottling on the surface of appellant's foot, temperature changes, and poor range of motion. Dr. Jackman diagnosed chronic pain syndrome. She reported that appellant also had a documented diagnosis of CRPS, likely type two, due to her right foot injury and subsequent surgeries. Dr. Jackman also provided lumbar block procedure notes dated January 12 through March 3, 2021.

OWCP received diagnostic imaging reports for appellant's lumbar and thoracic areas of the spine.

On September 21, 2021 appellant requested reconsideration. She noted the July 21, 2008 employment injury and indicated that, after the eighth surgery, she was left with permanent CRPS and severe nerve damage in her right foot and ankle. Appellant reported that her whole foot was hypersensitive to touch of any kind and that she was unable to wear socks or shoes due to pain. She explained how she had to adjust how she walked or stood to perform daily activities such as getting out of bed, grocery shopping, and driving and that she could no longer enjoy certain activities because of the constant pain in her right ankle and foot.

In a letter dated March 26, 2021, Dr. Jackman indicated that appellant had a history of long-standing right foot pain, which had resulted in functional impairments. She reported that appellant had tried all usual treatments for CRPS without any meaningful pain relief. Dr. Jackman opined that appellant qualified for a pain evaluation for a disability rating.

By decision dated October 7, 2021, 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.⁴

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).

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).

⁵ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *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 (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.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Preliminarily, the Board finds that OWCP did not receive additional evidence of permanent impairment with appellant's request for reconsideration received on September 21, 2021. The Board will, therefore, consider this a reconsideration request as opposed to a claim for an additional schedule award.⁹

In support of her reconsideration request, appellant discussed her injury and how the constant pain in her right foot affected her activities of daily living. However, these arguments were duplicative of arguments previously of record and, therefore, do not constitute a basis for reopening the case.¹⁰ Consequently, appellant is not entitled to further 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).¹¹

Appellant also submitted letters and reports by Dr. Jackman dated November 18, 2020 through March 26, 2021, which noted diagnoses of chronic pain syndrome and CRPS. She also requested a pain evaluation in order to determine disability rating. However, as Dr. Jackman did not proffer an impairment rating based upon the sixth edition of the A.M.A., *Guides*, the Board finds that this evidence is irrelevant to the underlying issue of whether appellant has established greater than 20 percent permanent impairment of the right lower extremity.¹² Likewise, Dr. Saltzman's November 11, 2020 letter also failed to address the issue of permanent impairment. 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.¹³ As such, appellant 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).¹⁴

The Board finds, therefore, that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 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).

⁹ See *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *P.D.*, Docket No. 18-0962 (issued September 18, 2019).

¹⁰ See *F.H.*, Docket No. 20-0309 (issued January 26, 2021); *C.M.*, Docket No. 19-1610 (issued October 27, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984).

¹¹ *Supra* note 5 at § 10.606(b)(3).

¹² See *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward, id.*; *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁴ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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