

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

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<b>M.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0216</b>
	)	<b>Issued: September 23, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Bloomfield Hills, MI, Employer</b>	)	
_____	)	

*Appearances:*  
Anthony S. Arenas, for the appellant<sup>1</sup>  
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 November 22, 2021 appellant, through her representative, filed a timely appeal from a September 22, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated January 25, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of this case.

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<sup>1</sup> 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 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP properly denied appellant's August 26, 2021 request for reconsideration, finding that the only appeal option was to the Board.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On November 25, 2006 appellant, then a 32-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed grade 1 anterolisthesis of L5-S1 due to factors of her federal employment, repetitive lifting of magazines. She noted that she first became aware of her condition in November 1998. Appellant did not stop work. On February 5, 2002 a nonwork accident occurred when a car hood fell onto her neck causing headaches and severe neck and low back pain. Appellant continued to work with restrictions. She stopped work on September 11, 2008.

By decision dated March 5, 2007, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to her accepted employment activities.

Appellant subsequently submitted multiple requests for reconsideration. OWCP, however, denied modification by decisions dated April 1, 2008 through January 25, 2019.<sup>4</sup>

On May 18, 2020 OWCP received a request for reconsideration dated December 18, 2019 from appellant's representative. A handwritten note at the bottom of the request indicated that it was sent by certified mail on December 18, 2019. Appellant also submitted additional medical evidence.

By decision dated July 15, 2020, OWCP denied appellant's May 18, 2020 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

In a letter dated July 22, 2020, appellant's representative contended that OWCP failed to address a December 18, 2019 request for reconsideration and requested a merit decision. He repeated this request on September 30 and November 16, 2020, February 25 and March 23, 2021.

On July 14, 2021 OWCP provided appellant with a copy of the July 15, 2020 decision denying the request for reconsideration.

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<sup>3</sup> Docket No. 16-0110 (issued April 4, 2016); Docket No. 14-106 (issued April 17, 2014); Docket No. 11-1886 (issued April 17, 2012); Docket No. 08-2474 (issued May 19, 2009).

<sup>4</sup> The April 1 and September 3, 2008, April 26, 2011, and June 3, 2013 decisions of OWCP were appealed to the Board. The Board affirmed those decisions. *Id.*

On August 26, 2021 appellant, through her representative, again requested reconsideration of the July 15, 2020 nonmerit decision. She again contended that she had submitted a request for reconsideration on December 18, 2019, which should have been considered timely received pursuant to the mailbox rule.

By decision dated September 22, 2021, OWCP denied appellant's August 26, 2021 request for reconsideration, finding that the only appeal option was to the Board.

### **LEGAL PRECEDENT**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>5</sup> This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).<sup>7</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>8</sup>

OWCP regulations provide that:

"Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(3), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of nonmerit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration."<sup>9</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's August 26, 2021 request for reconsideration of the merits of her claim, finding that the only appeal option was to the Board.

By decision dated January 25, 2019, OWCP denied modification of its prior decisions. On May 18, 2020 it received a request for reconsideration dated December 18, 2019. A handwritten note at the bottom of the request indicated that it was sent by certified mail on December 18, 2019.

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<sup>5</sup> *Supra* note 1 at § 8128(a); *see M.G.*, Docket No. 21-0893 (issued December 27, 2021); *T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>8</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>9</sup> *See* 20 C.F.R. § 10.608(b).

Appellant also submitted additional medical evidence. By decision dated July 15, 2020, OWCP denied her request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. On August 26, 2021 appellant, through her representative, requested reconsideration of the July 15, 2020 nonmerit decision.

As explained above, OWCP's regulations provide in part that, "A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of nonmerit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration."<sup>10</sup> As appellant requested reconsideration of the July 15, 2020 nonmerit decision, OWCP properly found that the only appeal option was to the Board. Therefore, the Board finds that OWCP properly denied appellant's reconsideration request pursuant to 20 C.F.R. § 10.608(b).

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's August 26, 2021 request for reconsideration of the merits of her claim, finding that the only option for appeal was to the Board.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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

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<sup>10</sup> *Id.*