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| <b>S.P., Appellant</b>                        | ) |                                 |
|   | ) |                                 |
| <b>and</b>                                    | ) | <b>Docket No. 23-0314</b>       |
|   | ) | <b>Issued: December 8, 2023</b> |
| <b>DEPARTMENT OF VETERANS AFFAIRS,</b>        | ) |                                 |
| <b>MARGARET COCHRAN CORBIN VETERANS</b>       | ) |                                 |
| <b>AFFAIRS CAMPUS, New York, NY, Employer</b> | ) |                                 |
|   | ) |                                 |

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

On December 29, 2022 appellant filed a timely appeal from a September 16, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 14, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

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).

<sup>2</sup> The Board notes that, following the September 16, 2022 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. 20 C.F.R. § 501.2(c)(1). Evidence not before OWCP will not be considered by the Board for the first time on appeal." *Id.*

## **FACTUAL HISTORY**

On February 10, 2022 appellant, then a 32-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2022 she contracted COVID-19 while in the performance of duty. She stopped work on January 6, 2022 and returned to work on January 24, 2022.

By decision dated February 14, 2022, OWCP found that appellant was not entitled to continuation of pay (COP) as she had not reported her injury on an OWCP-approved form within 30 days of the date of injury. It noted that the denial of COP did not affect her entitlement to other compensation benefits.

On March 11, 2022 appellant requested reconsideration. She related that she had notified her supervisors of her illness during the time she was out sick from January 5 to 24, 2022. Appellant related that she was not informed of the 30-day deadline to submit a claim for COVID-19. She advised that she was initially too sick to complete paperwork, and that when she resumed work, she was too busy to complete the forms. Appellant questioned why management had not informed her of the deadline for completing the forms.

By decision dated September 16, 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.<sup>3</sup>

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.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens

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<sup>3</sup> 5 U.S.C. § 8128(a); *see C.V.*, Docket No. 22-0078 (issued November 28, 2022); *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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *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.

and reviews the case on its merits.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In her reconsideration request, appellant asserted that she had informed her supervisors of her illness during the time she was off work with COVID-19. She maintained that she was too sick to complete the paperwork. The Board finds that appellant has raised a new and relevant legal argument not previously considered. Therefore, she is entitled to a review of the merits based on the second above-noted requirement under section 10.606(b)(3).<sup>8</sup> Accordingly, the Board will set aside OWCP's September 16, 2022 decision and remand the case for an appropriate merit decision.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>6</sup> *Id.* at § 10.608(a); *see also D.B.*, Docket No. 22-0518 (issued November 28, 2022); *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *See M.K.* Docket No. 22-1328 (issued July 5, 2023); *P.B.*, Docket No. 22-0544 (issued October 17, 2022); *P.G.*, Docket No. 20-0235 (issued July 13, 2020); *T.B.*, Docket No. 18-1214 (issued January 29, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 8, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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