

¹ 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.

(OWCP).² Pursuant to the Federal Employees' Compensation Act³ (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 August 16, 2013 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2013 she sustained acute bronchospasms and persistent cough as a result of being exposed to cleaning solutions and toner particles while in the performance of duty. OWCP accepted her claim for acute bronchospasms.

On October 23, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated December 31, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On January 20, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted diagnostic pulmonary testing obtained on February 23, 2021, which demonstrated a normal flow volume loop, adequate maximal voluntary ventilation relative to forced expiratory volume in the first second, normal lung capacity, mild reduction in single breath diffusion capacity, and normal diffusion capacity to alveolar volume area.

The telephonic hearing was held on May 3, 2021.

On May 11, 2021 OWCP received additional medical evidence. In a report dated September 2, 2020, Dr. Ralph Nietrzeba, a specialist in cardiac and pulmonary care, related that appellant had reached maximum medical improvement.

In a report dated May 8, 2021, Dr. Sami Moufawad, Board-certified in pain medicine, reviewed appellant's history of injury and conducted a physical examination. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

² The Board notes counsel only appealed from OWCP's September 2, 2021 nonmerit decision. Although OWCP's June 16, 2021 merit decision is within the Board's jurisdiction, counsel did not appeal from that decision. Therefore, the Board will not address the June 16, 2021 merit decision in this appeal. 20 C.F.R. § 501.3(c)(4); *see E.R.*, Docket No. 20-1110 (issued December 23, 2020).

³ 5 U.S.C. § 8101 *et. seq.*

Impairment (A.M.A., *Guides*),⁴ Dr. Moufawad opined that appellant had 11 percent whole person impairment as a result of her accepted acute bronchospasm.

By decision dated June 16, 2021, OWCP's hearing representative affirmed the December 31, 2020 decision.

On July 26, 2021 appellant, through counsel, requested reconsideration. With the request, appellant resubmitted the May 8, 2021 report of Dr. Moufawad.

By decision dated September 2, 2021, OWCP denied appellant's request for reconsideration without reviewing the merits of her claim.

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.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁶ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *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 (February 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.

⁸ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *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 July 26, 2021 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that 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).

In support of her reconsideration request, appellant resubmitted the May 8, 2021 report of Dr. Moufawad, which was previously of record. Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ As appellant failed to provide relevant and pertinent new evidence with her request for reconsideration, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet 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).

¹⁰ *D.M.*, Docket No. 18-1003 (issued July 16, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 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