

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

_____)	
D.P., Appellant)	
)	
and)	Docket No. 23-0074
)	Issued: January 9, 2023
U.S. POSTAL SERVICE, POST OFFICE, Sewell, NJ, Employer)	
_____)	

Appearances:
Kristen Williams, for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On October 22, 2022 appellant, through her representative, filed a timely appeal from an April 27, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated April 26, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

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 an 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 27, 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. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 October 6, 2017 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2017 she sustained anxiety, stress, headaches, and nausea due to a disciplinary hearing on a false charge of sexual assault. She stopped work on September 27, 2017. OWCP assigned the claim OWCP File No. xxxxxx652.

Appellant previously filed a March 24, 2018 Form CA-1 alleging that she experienced stress and an anxiety attack on that date when she was told a protective order had been issued against her based on false allegations. OWCP assigned that claim OWCP File No. xxxxxx271.⁴

In a development letter dated November 22, 2017, OWCP informed appellant of the deficiencies of her claim under OWCP File No. xxxxxx652. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded both parties 30 days to respond.

Subsequently, OWCP received a report from a September 27, 2017 predisciplinary investigative interview of appellant regarding allegations that she had inappropriately touched a coworker on September 19, 2017. Appellant denied that any incident had occurred between herself and the coworker on that date.

By decision dated March 22, 2018, under OWCP File No. xxxxxx652, OWCP denied appellant's traumatic injury claim. It found that she had not established the medical component of fact of injury as there was no medical evidence containing a diagnosis in connection with the described incident. OWCP further found that appellant had not established any compensable factors of employment.

On April 17, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 4, 2018, OWCP denied appellant's traumatic injury claim under OWCP File No. xxxxxx271, finding that she had not established the occurrence of the claimed employment factor. On May 14, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On October 9, 2018 a telephonic hearing was held regarding the March 22 and May 4, 2018 decisions under OWCP File Nos. xxxxxx652 and xxxxxx271.

⁴ OWCP has administratively combined OWCP File Nos. xxxxxx271 and xxxxxx652, with the latter serving as the master file.

By decision dated December 19, 2018, OWCP's hearing representative affirmed the March 22 and May 4, 2018 decisions.

On December 19, 2019 appellant requested reconsideration of the December 19, 2018 decision. She maintained that D.B., the coworker who had accused her of sexual assault, had previously hit her with equipment. Appellant attributed her condition to D.B.'s false accusation and her employer preventing her from entering her work location due to a restraining order.

Subsequently, OWCP received a November 20, 2017 investigative memorandum regarding the alleged September 19, 2017 incident under OWCP File No. xxxxxx652.

By decision dated February 25, 2020, issued under OWCP File No. xxxxxx652, OWCP denied modification of its December 19, 2018 decision.

On February 25, 2021 appellant requested reconsideration of the February 25, 2020 decision.

By decision dated April 26, 2021, OWCP modified its February 25, 2020 decision to reflect that appellant had established fact of injury, but denied the claim as she had not established a compensable employment factor.

On April 25, 2022 appellant requested reconsideration. In support thereof, she submitted a report dated December 10, 2021 from Dr. M. Seplow, an osteopath and Board-certified psychiatrist.

By decision dated April 27, 2022, 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.⁵

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.⁶

⁵ 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).

⁶ 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).

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

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 has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to a 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).¹⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. The underlying issue is whether appellant has established a compensable factor of employment. This is a factual issue, which must be addressed by pertinent new and relevant factual evidence.¹¹ In support of her request for reconsideration, appellant submitted a medical report dated December 10, 2021 from Dr. Seplow. The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹² As appellant has not provided relevant and pertinent new evidence regarding the underlying issue of whether she has established a compensable employment factor, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

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); *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).

⁹ *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).

¹⁰ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

¹¹ *See A.M.*, 21-0603 (issued November 10, 2021); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹² *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹³ 20 C.F.R. § 10.606(b)(3)(iii); *S.B.*, Docket No. 22-0965 (issued September 22, 2022); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

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.¹⁴

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 April 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).