

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

A.E., Appellant)	
)	
and)	Docket No. 23-0245
)	Issued: June 16, 2023
U.S. POSTAL SERVICE, BOGGS ROAD POST)	
OFFICE, Duluth, GA, Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 7, 2022 appellant, through counsel, filed a timely appeal from a June 10, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days had elapsed from OWCP's last merit decision, dated May 4, 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 therefore lacks jurisdiction over the merits of the claim.

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.

² 5 U.S.C. § 8101 *et seq.*

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 March 13, 2021 appellant, then a 51-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2020 she experienced right wrist and elbow pain, a right wrist sprain, left hip and lower back pain, a left hip labral tear, a left gluteus medius tendon tear, and retrolisthesis of lumbar vertebrae when she was delivering mail and slipped on a grassy slope while in the performance of duty. She related that she impacted the ground with her hands, wrists, elbows, hips, and buttocks. Appellant stopped work on March 16, 2021.

In support of her claim, appellant submitted an undated report in which an unidentified healthcare provider noted that she was treated on February 17 and March 1, 2021, provided work restrictions, and indicated findings of a left hip labral tear, left hip gluteus medius tendon tear, and retrolisthesis of lumbar vertebrae. OWCP also received an undated surgical appointment note from an unidentified healthcare provider.

In a September 17, 2020 statement, appellant noted that on that day she slipped and fell on wet grass while delivering a package and landed on her back side. She related that she injured her right wrist, hand, and elbow and developed constant pain in her right wrist which radiated to her elbow. In an affidavit of even date, appellant indicated by checkmark that she was offered a Form CA-1 and was not, at that time, filing a traumatic injury claim for a work injury nor seeking medical attention.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16) on September 17, 2020. In Part B of the Form CA-16, attending physician's report, dated September 30, 2020, an unidentified healthcare provider noted that appellant reported right wrist and right elbow pain, diagnosed right and left wrist sprains, and provided a right wrist splint and work restrictions of not lifting more than 10 pounds.

In a September 23, 2020 return to work note, an unidentified healthcare provider held appellant off work until September 25, 2020 with work restrictions of limited use of the right wrist, lifting no more than 10 pounds, and wearing a brace as needed.

A September 30, 2020 duty status report (Form CA-17) from an unidentified healthcare provider provided work restrictions of lifting a maximum of 10 pounds.

In an October 7, 2020 return to work note, an unidentified healthcare provider held appellant off work until the following day and provided work restrictions of light-duty work, limited use of the right wrist, no lifting more than 10 pounds, and wearing a brace as needed.

In a March 29, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received an undated report in which an unidentified healthcare provider related that appellant broke her right wrist in February 2020 and subsequently injured the same wrist on September 17, 2020, when she was delivering a package and slipped on wet grass, requiring her to brace herself with her wrists. The provider indicated that appellant reported continuing pain, tingling in her fingers, pain radiating to her right elbow, and back pain radiating to her left hip, leg, and knee.

A March 1, 2021 visit note from Dr. Stephen R. Fisher, a Board-certified orthopedic surgeon, diagnosed a labral tear of the left hip joint, lower back pain, retrolisthesis of vertebrae, and left gluteus medius tendon tear. Dr. Fisher recommended physical therapy and referred appellant to a specialist.

In a March 8, 2021 visit note, Dr. Keith Osborn, a Board-certified orthopedic surgeon, noted that appellant presented for low back and left leg pain due to a work-related fall that occurred on September 17, 2020. She reported a sharp, dull ache and weakness and numbness in her left leg which worsened when sitting, standing, or walking. Dr. Osborn diagnosed left leg weakness, lumbar radiculopathy, and lumbar spondylolisthesis.

A March 11, 2021 visit note from Dr. Christopher Potts, a Board-certified orthopedic surgeon, diagnosed left hip joint pain and noted that, because conservative measures had failed, appellant had elected to proceed with surgical intervention.

In an April 20, 2021 operative report, Dr. Potts noted pre- and postoperative diagnoses of left hip combined-type femoroacetabular impingement, left hip acetabular labral tear, left iliopsoas impingement, left hip acetabular chondromalacia, left hip high-grade partial tear of the gluteus medius, left hip trochanteric bursitis, and left hip iliotibial band syndrome. He further described the procedures. OWCP also received a medical and surgical authorization request for services provided by Dr. Potts on April 20, 2021.

In an April 22, 2021 attending physician's report (Form CA-20), Dr. Potts noted that appellant reported falling at work in October 2020 and diagnosed femoral acetabular impingement, acetabular labral tear, and iliopsoas impingement. He checked a box marked "Yes" to indicate his belief that the condition was caused or aggravated by an employment activity, noting that her fall could have caused tears. Dr. Potts held appellant off work until June 23, 2021 for light-duty work and until June 30, 2021 for regular work.

By decision dated May 4, 2021, OWCP accepted that the September 17, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted September 17, 2020 employment incident.

On May 4, 2022 appellant, through counsel, requested reconsideration of the May 4, 2021 decision and submitted additional evidence.

In an undated return to work note, Dr. Osborn related that appellant underwent lumbar spinal fusion on August 31, 2021 and may return to work between October 31 and November 30, 2021, depending on prognosis, and provided work restrictions of sedentary work. He noted that she was expected to return to regular duty on January 15, 2022.

In a February 17, 2021 visit note, Dr. Fisher noted that appellant presented for left hip and back pain and had a long history of intermittent back pain. He diagnosed instability of the left hip joint, lower back pain, and left hip joint pain.

In a March 29, 2021 visit note, Dr. Osborn indicated that appellant was injured on September 17, 2020 when she fell while delivering mail and experienced persistent low back, left buttock, groin, and leg pain. He reviewed diagnostic tests and diagnosed lumbar spondylolisthesis and lumbar stenosis.

A November 8, 2021 note from Dr. Osborn related that appellant was treated on that date and provided work restrictions of no lifting over 10 pounds and sedentary duty.

By decision dated June 10, 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 does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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).

³ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* § 10.607(a). 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.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. In support of her reconsideration request, appellant submitted an undated work status note in which Dr. Osborn related that she underwent lumbar spinal fusion on August 31, 2021 and may return to work between October 31 and November 30, 2021 with work restrictions. A February 17, 2021 visit note from Dr. Fisher diagnosed instability of the left hip joint, lower back pain, and left hip joint pain. Appellant also submitted a March 29, 2021 visit note and a November 8, 2021 note in which Dr. Osborn diagnosed lumbar spondylolisthesis and lumbar stenosis, noted that she was injured on September 17, 2020 when she fell while delivering mail, and provided work restrictions. While this medical evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether appellant has established causal relationship between her diagnosed conditions and the accepted September 17, 2020 employment incident. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Therefore, the above evidence does not constitute relevant and pertinent new evidence not previously considered by OWCP and appellant was not entitled to a merit review of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

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.¹¹

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).¹²

⁸ *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

⁹ *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *R.P.*, Docket No. 20-0661 (issued April 14, 2021); *D.P.*, Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁰ *Id.*

¹¹ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

¹² The Board notes that the employing establishment issued a Form CA-16 on September 17, 2020. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2023
Washington, DC

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

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

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