

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

M.W., Appellant)	
)	
and)	Docket No. 22-1294
)	Issued: November 3, 2023
U.S. POSTAL SERVICE, MILILANI POST)	
OFFICE, Mililani, HI, Employer)	
)	

Appearances: *Case Submitted on the Record*
Kathryn Puanani Akana, for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 8, 2022 appellant, through her representative, filed a timely appeal from a March 22, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 August 2, 2019 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2019 she twisted her left ankle, scraped her chin, lip, and nose, and sustained bruising and swelling in her left knee and pain in her right foot, both hands, right wrist, back, and neck, when she tripped and fell over a two-inch step while in the performance of duty. The employing establishment controverted her claim.³ Appellant did not stop working.

The employing establishment submitted a July 23, 2019 statement from M.A., a co-worker, noting that, upon returning to the office that afternoon, appellant mentioned that she tripped over a step at one of the houses on her route and fell on her knees, hand, and face. M.A. asserted that appellant did not appear to be injured and did not limp. In an August 14, 2019 statement, L.W., a supervisor, noted that appellant informed her that she tripped over a step at one of the houses on her route and was instructed to fill out an accident report. She noted that appellant was not limping and had no scrape marks on her face.

Appellant submitted work status reports from Dr. Laura K. Winter, a Board-certified occupational medicine specialist, dated August 8 through 13, 2019, indicating that appellant was injured on July 23, 2019 and diagnosed left knee sprain, left ankle sprain, and right wrist sprain.

In a development letter dated August 21, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted additional medical evidence, including an August 2, 2019 report from Dr. Winter, relating that appellant stated that she tripped on a step and, trying not to crush the box she was carrying, fell directly on her left knee and rolled her ankle. Dr. Winter examined appellant and diagnosed left knee sprain, left ankle sprain, and right wrist sprain.

Appellant responded to OWCP's development questionnaire on September 4, 2019, relating that at approximately 11:00 a.m. on the date of injury, she approached the door to a house and, as she was looking around for any loose dogs, she tripped on a step in the pavement about two inches high. She fell forward with a parcel in both hands and a satchel on her right shoulder. Appellant stated that the force of the fall caused her to scrape her face and that her knee, wrist, and hands endured most of the impact of the fall. She experienced pain in her right knee, left ankle,

³ OWCP previously accepted an August 15, 2009 traumatic injury claim under OWCP File No. xxxxxx719 for open wounds of the left leg, but denied it for post-traumatic stress disorder (PTSD). It also accepted a December 16, 2010 occupational disease claim under OWCP File No. xxxxxx547 for left shoulder sprain, cervical sprain, and bilateral wrist sprains, as well as a December 1, 2016 occupational disease claim under OWCP File No. xxxxxx946 for sprain of joints and ligaments of neck, bilateral carpal tunnel syndrome, strain of muscle, fascia, and tendon of neck and lower back, and sprain of lumbar spine and pelvis. Appellant's claims have not been administratively combined.

right foot, left little and ring fingers, right wrist, right middle finger, back, and neck, as well as swelling in her left knee and abrasions on her face. Appellant indicated that she continued her route cautiously as most of it was curbside. She asserted that her supervisors did not even look at her to notice the abrasions on her face and hands.

By decision dated September 26, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the July 23, 2019 employment incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 16, 2019 appellant, through her representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held on February 5, 2020. She continued to submit medical evidence.

In an October 21, 2019 statement, appellant related her history of treatment and ongoing symptoms. She stated that she thought she would recover from the July 23, 2019 employment incident after a few days and, thus, only sought treatment after the pain persisted for about a week. Appellant also provided a January 11, 2020 detailed timeline from the date of injury to the present. She described the employment incident, history of injury, and ongoing symptoms. Appellant noted that the employing establishment issued her a letter of warning for "unsatisfactory safety performance" because she allegedly did not check her surroundings for clearance as she approached the customer's door on the date of injury. She indicated that she felt a sharp pain in her left knee while delivering mail on November 16, 2019, and was told to file a new Form CA-1. On December 26, 2019 appellant was suspended from work because she was an "accident repeater." She noted that the letter of suspension specifically acknowledged that she was previously injured at work on July 23, 2019.

In a January 11, 2020 letter to her representative, appellant explained that she developed post-traumatic stress disorder (PTSD) after being attacked by dogs while delivering mail on August 15, 2009. She explained that on July 23, 2019 she was surveying her surroundings for loose dogs when she tripped on the elevated step in the walkway leading to the front door. Appellant also asserted that L.W. and M.A.'s statements were false, noting that neither made any attempt to examine her face or notice that she was walking in pain after her fall.

Appellant also submitted photographs of a walkway in front of a house showing a raised step in the pavement.

The employing establishment submitted additional statements from L.W. and M.A. dated February 25, 2020. L.W. indicated that when appellant returned from her route, she stood an arm's length away from her and stated that she tripped and fell. She stated that she looked at appellant straight on as she was talking and did not see any scratches on her face. L.W. commented to M.A. that she was not walking like she was hurt. M.A. provided a substantially similar account.

By decision dated March 25, 2020, OWCP's hearing representative denied modification.

On September 17, 2020 appellant, through her representative, requested reconsideration of OWCP's March 25, 2020 decision. In support thereof, she submitted additional arguments and disciplinary letters from the employing establishment. A September 11, 2019 letter of warning

from a supervisor stated that on July 23, 2019, at approximately 11:00 a.m., appellant tripped and fell while walking to a front door and that she notified L.W. at approximately 2:00 p.m. The letter noted that she had been trained to be cognizant of her surroundings and check for clearance, as well as to report any injuries or accidents to management as soon as they occur. In a December 26, 2019 notice of suspension, a supervisor described appellant's November 16, 2019 employment incident in which she injured her knee. The supervisor further stated that "the records reveal you are an accident repeater. You committed a similar unsafe act on July 23, 2019 when you failed to see two steps and tripped and injured your left knee."

By decision dated December 31, 2020, OWCP denied modification of the March 25, 2020 decision.

On December 29, 2021 appellant, through her representative, requested reconsideration of OWCP's December 31, 2020 decision. In support of her request, she submitted a detailed statement, including a description of her state of mind at the time of the employment incident. Appellant also explained that the one- or two-inch rise in the pavement was very difficult to see as both levels of the ground blended together. She argued that the employing establishment failed to follow its own policies, because it did not perform an accident investigation at the scene of the incident after she reported it. Appellant provided detailed rebuttals L.W.'s and M.A.'s statements.

By decision dated March 22, 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.⁴

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.⁵

⁴ 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).

⁵ 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.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

The underlying issue is whether appellant has established the occurrence of the alleged July 23, 2019 employment incident. This is a factual issue, which must be addressed by pertinent new and relevant factual evidence.⁹ In support of her request for reconsideration, appellant submitted a December 29, 2021 statement. She described her state of mind at the time of the employment incident, explained that the one- or two-inch rise in the pavement was very difficult to see as both levels of the ground blended together, and argued that the employing establishment failed to follow its own policies, because it did not perform an accident investigation at the scene of the incident. Appellant also provided detailed rebuttals to L.W.'s and M.A.'s statements. The Board finds that this constitutes relevant and pertinent new evidence warranting further consideration of the merits of her claim. Therefore, the Board finds that appellant is entitled to a review of the merits based on the third requirement of 20 C.F.R. § 10.606(b)(3).¹⁰ Accordingly, the Board will set aside OWCP's March 22, 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.

⁶ *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.

⁷ *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).

⁸ *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).

⁹ *See A.M.*, Docket No. 21-0603 (issued November 10, 2021); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ 20 C.F.R. § 10.606(b)(3); *see L.D.*, Docket No. 22-0214 (issued September 21, 2022); *M.N.*, Docket No. 22-0243 (issued June 28, 2022); *see also S.C.*, Docket No. 20-1661 (issued May 6, 2022); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 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: November 3, 2023
Washington, DC

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

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

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