

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

_____)
D.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Rochester, NY, Employer)
_____)

Docket No. 23-0366
Issued: November 30, 2023

Appearances:
Appellant, pro se
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 January 17, 2023¹ appellant filed a timely appeal from a July 19, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 28, 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 the claim.

¹ The Board's *Rules of Procedure* provide that "Any notice of appeal must be filed within 180 days from the date of issuance of a decision of OWCP." 5 U.S.C. § 501.3(e). The 180th day following the July 19, 2022 OWCP decision, was January 15, 2023. As this fell on a Sunday, and Monday, January 16, 2023 was a federal holiday, appellant had until Tuesday, January 17, 2023 to file the appeal. *Id.* at § 501.3(f). As this appeal was received by the Clerk of the Appellate Boards on January 17, 2023, it was timely filed.

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 February 15, 2017 appellant, then a 55-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed lower back strain, radiculopathy and leg weakness due to factors of her federal employment including repetitious standing, twisting, bending, stooping, and lifting. She noted that she first became aware of her condition and realized that it was caused or aggravated by her employment on January 28, 2015.³ Appellant stopped work on January 29, 2015 and did not return.⁴

By decision dated May 16, 2018, OWCP accepted the claim for aggravation of preexisting lumbar radiculopathy and aggravation of preexisting bilateral sciatica.

On July 16, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work commencing January 30, 2015.

In a report dated January 29, 2015, Dr. Brian Dailye, an emergency medicine specialist, diagnosed acute right lumbar radiculopathy and provided a work excuse note.

OWCP also received medical notes and duty status reports (Form CA-17) dated January 28, 2015 through October 1, 2018 from Dr. David Hope, an osteopath and family medicine specialist. In July 29 and August 28, 2015 treatment notes, Dr. Hope indicated that appellant was released back to work with restrictions. On March 6, 2017 appellant was cleared for a four-hour workday with restrictions. In a March 30, 2017 report, Dr. Hope indicated that appellant would require permanent work restrictions. In May 18 and 19, 2017 reports, he provided a history of appellant's work injuries, noting that she had been on restricted duty since 2011 due to an accepted lumbar strain. Dr. Hope opined that on January 28, 2015, appellant sustained a permanent aggravation of her prior lumbar injury.

In a June 13, 2018 report, Dr. Hope reported that appellant had a prior history of low back injury in 2005 and noted that her January 28, 2015 work injury was accepted for aggravation of preexisting lumbar radiculopathy and bilateral sciatica. He opined that appellant's work-related aggravations and retrolisthesis had not resolved, were permanent, and had worsened based on diagnostic testing. Dr. Hope also noted that appellant reported she was removed from the employing establishment in June 2017 as they were unable to accommodate her restrictions.

³ Appellant has prior claims for lumbar injuries under OWCP File Nos. xxxxxx464 (date of injury April 25, 2005), xxxxxx523 (date of injury June 12, 2006), and xxxxxx661 (date of injury April 8, 2009). Appellant's claims have been administratively combined with OWCP File No. xxxxxx464 serving as the master file.

⁴ Appellant was separated from the employing establishment effective June 17, 2017.

In letters dated March 7 and April 3, 2017, the employing establishment indicated that there was no work available within appellant's restrictions.

In an October 11, 2018 development letter, OWCP indicated that additional evidence was needed to establish disability for work during the entire period claimed from January 30, 2015 and continuing as the medical evidence did not substantiate that the disability was caused by the January 28, 2015 work injury. It afforded appellant 30 days to submit the requested information.

OWCP continued to receive medical evidence from Dr. Hope, which indicated that appellant could work four hours with restrictions. In reports dated June 13, July 26, August 29, September 26, and November 14, 2018, Dr. Hope opined that appellant was medically qualified to work with restrictions.

By decision dated January 3, 2019, OWCP denied appellant's claim for wage-loss compensation commencing January 30, 2015, finding that the evidence of record was insufficient to establish disability from work during the claimed period.

On December 30, 2019 appellant requested reconsideration.

Medical reports from Dr. Hope dated January 16, February 26, March 26, June 21, August 22, September 18, 2019 and January 16 and February 12, 2020 were received. Dr. Hope indicated that appellant presented for a follow-up of her June 12, 2006 work-related back injury. He assessed lumbar region radiculopathy, bilateral, chronic right-sided sciatica and chronic left-sided sciatica and opined that appellant was medical qualified to work with restrictions.

By decision dated March 24, 2020, OWCP denied modification of its January 3, 2019 decision.

On March 19, 2021 appellant requested reconsideration. In her March 19, 2021 statement, she related that her employment was terminated in 2017 and she was not allowed to return to work, allegedly because the medical evidence addressed a prior injury.

Medical reports from Dr. Hope dated June 21 and October 23, 2019, and June 28, 2020 were received. In those reports, Dr. Hope continued to report a June 12, 2006 work injury and provide assessments of lumbar region radiculopathy, bilateral, chronic right-sided sciatica and chronic left-sided sciatica. He also opined that appellant was medically qualified to work with restrictions.

In an October 22, 2020 disability status form and workers' compensation examination notes, Dr. Hope diagnosed a low back strain and provided restrictions. He reported a June 12, 2006 date of injury.

By decision May 28, 2021, OWCP denied modification of its March 24, 2020 decision.

On May 7, 2022 appellant requested reconsideration. In her May 7, 2022 statement, she indicated her confusion over the denial of her wage-loss compensation claim, noting that she had provided medical narratives which explained why she did not return to her former job with the employing establishment. Appellant discussed Dr. Hope's June 13, 2018 report and advised that

it explained how her injury progressed and why she needed restrictive duty. She explained that she was working a limited-duty job as a result of her June 12, 2006 work injury when she was re-injured on January 28, 2015. Appellant also noted that she had requested to be returned to the limited-duty job she had worked, but the employing establishment never returned her to that job or offered her a new one for this injury. She also indicated that she had medically separated from the employing establishment and received Office of Personnel Management (OPM) disability retirement in late summer of 2019. Appellant provided a timeline of the events which transpired after her January 28, 2015 work injury and a duplicative copy of Dr. Hope's June 13, 2018 report previously of record.

By decision dated July 19, 2022, OWCP denied appellant's request for reconsideration.

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

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

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record and the submission of evidence or

⁵ *Supra* note 2 at § 8128(a); *see also*, *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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 C.M.*, Docket No. 23-0289 (issued June 22, 2023); *see also* *L.D., id.*; *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 (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.

⁸ *Id.* at § 10.608(a); *see also* *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *C.M.*, *supra* note 6; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

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).

In support of her timely reconsideration request, appellant asserted that she had provided medical narratives which explained why she did not return to her former job with the employing establishment, and she discussed the substance of Dr. Hope's June 13, 2018 report, previously of record. She also explained that she was working a limited-duty job as a result of her June 12, 2006 work injury when she was reinjured on January 28, 2015, but that the employing establishment did not allow her to return to that position or offer her any other modified duty following her 2015 injury. However, appellant has previously raised this argument before OWCP. Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹¹ Consequently, appellant 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).¹²

In support of her request for reconsideration, appellant resubmitted Dr. Hope's June 13, 2018 report, which was previously of record. As noted, submission of evidence or argument which repeats or duplicates evidence or argument previously of record does not constitute a basis for reopening a case.¹³ Consequently, appellant is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that appellant has not met 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 *W.C.*, Docket No. 22-0938 (issued December 19, 2022); *G.T.*, Docket No. 21-1276 (issued September 8, 2022); *I.M.*, Docket No. 19-1189 (issued November 16, 2020); *G.H.*, Docket No. 22-1306 (issued January 11, 2023); *B.T.*, Docket No. 22-0006 (issued December 28, 2022); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *T.R.*, Docket No. 23-0287 (issued June 23, 2023); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹² *R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹³ *T.R.*, *supra* note 11; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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