

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

D.A., Appellant)	
)	
and)	Docket No. 23-0441
)	Issued: October 12, 2023
U.S. POSTAL SERVICE, JAMES E.)	
WORSHAM POST OFFICE, Chicago, IL,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2023 appellant filed a timely appeal from an August 17, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated August 10, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the August 17, 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 August 17, 2015 appellant, then a 36-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed severe major depression and post-traumatic stress disorder (PTSD) while in the performance of duty. She indicated that she first realized the relationship between her conditions and her federal employment on November 9, 2013.

By decision dated June 6, 2016, OWCP denied appellant's emotional condition claim, finding that she had not established compensable factors of employment which arose in the performance of duty.

On July 7, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review which was held on December 22, 2016. By decision dated February 14, 2017, an OWCP hearing representative affirmed the June 6, 2016 decision.

Appellant thereafter filed a series of reconsideration requests. By decisions dated April 11, 2018, May 3, 2019, July 7, 2020, and August 10, 2021, OWCP denied modification. It again found that appellant had not established a compensable factor of employment.

On August 5, 2022 appellant again requested reconsideration. She contended that, in addition to her claimed emotional conditions of depression, anxiety, and PTSD, she also developed repetitive strain/stress injuries, such as de Quervain's tenosynovitis and trochanteric bursitis, as a result of her employment.

In support of her request, appellant submitted medical bills for services rendered on March 28 and May 7, 2008.

Appellant also submitted a November 26, 2011 report signed by P. Williams, a registered nurse, who provided a discharge diagnosis of left hip trochanteric bursitis.

A partial clinical summary dated July 12, 2012 and signed by healthcare providers with illegible signatures noting appellant's poorly-controlled diabetes mellitus.

Unsigned and partial clinical summaries dated February 7, May 8, and June 6, 2013 and an unsigned and partial report dated June 3, 2013 continued to note appellant's poorly-controlled diabetes mellitus and also listed additional physical conditions and an emotional condition of depression.

Appellant resubmitted an April 4, 2008 report from a physician whose signature is illegible, which diagnosed de Quervain's tenosynovitis; an unsigned and partial clinical summary dated March 23, 2012, which noted her assessed problems of hypertension, hypercholesterolemia, and poorly-controlled diabetes mellitus; and an unsigned and partial certification of health care

provider report dated February 7, 2013, which indicated that appellant was being treated for uncontrolled diabetes, hypertension, depression, and knee bursitis.

By decision dated August 17, 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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.³

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁴ This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that: (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

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 for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

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 5 U.S.C. § 8128(a); *see 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).

⁴ 20 C.F.R. § 10.608(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).

⁵ *Id.* at § 10.606(b)(3); *see L.D., id.*

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 F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Supra* note 4.

In her August 5, 2022 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to further 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).

In support of her request for reconsideration, appellant submitted medical evidence, including bills for services rendered on March 28 and May 7, 2008, a November 26, 2011 report by Ms. Williams, clinical summaries and a report dated July 12, 2012 through June 6, 2013. While this medical evidence is new, it is not relevant because it does not directly address the underlying issue of the present case, which is factual in nature, *i.e.*, whether she submitted sufficient factual evidence, with adequate supporting documentation, to establish a compensable employment factor regarding her emotional condition claim. The submission of this medical evidence does not warrant a review of appellant's claim on the merits because the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

Appellant resubmitted an April 4, 2008 report, a March 23, 2012 clinical summary, and a February 7, 2013 certification of health care provider report, all of which were previously of record. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.¹¹ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under section 10.606(b)(3).

The Board, accordingly, 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 his claim, pursuant to 5 U.S.C. § 8128(a).

⁹ *D.P.*, Docket No. 21-0678 (issued January 10, 2023); *D.P.*, Docket No. 23-0074 (issued January 9, 2023); *J.D.*, Docket No. 21-1083 (issued October 26, 2022); *T.D.*, Docket No. No. 21-1381 (issued June 21, 2022); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ 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).

¹¹ *See W.C.*, Docket No. 19-0351 (issued August 4, 2020); *B.Y.*, Docket No. 17-1822 (issued January 18, 2019); *D.K.*, 59 ECAB 141 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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