

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

M.H., Appellant	)	
	)	
and	)	Docket No. 23-0779
	)	Issued: October 16, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Oklahoma City, OK, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 14, 2023 appellant filed a timely appeal from a February 9, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision on this issue, dated August 23, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

**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 November 5, 2021 appellant, then a 55-year-old window distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a back injury as a result of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

factors of her federal employment including continuous standing on concrete flooring, lifting, pushing, and pulling. She indicated that she first became aware of her condition and its relationship to her federal employment on November 3, 2021. Appellant did not stop work.

By development letter dated November 22, 2021, OWCP informed appellant that factual and medical evidence submitted was insufficient to establish her claim. It provided a factual questionnaire for completion, and requested that she submit a medical report from her physician which provided a rationalized medical opinion regarding the cause of her diagnosed conditions. OWCP afforded appellant 30 days to respond and submit additional evidence.

By decision dated January 12, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the duties of her federal employment occurred as described, noting that she did not respond to the development questionnaire included with the November 22, 2021 letter.

On March 1, 2022 appellant requested reconsideration.

In a letter dated January 27, 2022, appellant described duties of her employment including pushing, pulling wire cages containing multiple packages, lifting, stooping, bending, picking up and handling packages weighing up to 70 pounds, standing on her feet for eight or more hours per day, and repetitively twisting, turning, and placing packages in the wire cages.

By decision dated May 11, 2022, OWCP reviewed the merits of appellant's claim and found that she had established the duties of her federal employment, and thus established the factual component of fact of injury. However, it found that she had not submitted sufficient evidence to establish a causal relationship between duties of her federal employment and her diagnosed back conditions.

On May 14, 2022 appellant again requested reconsideration. With her request, she submitted a statement dated May 13, 2022 that repeated the information in her statement dated January 27, 2022.

By decision dated May 26, 2022, OWCP denied appellant's request for reconsideration, finding that the evidence submitted on reconsideration was substantially similar to evidence already of record and previously considered.

In a letter dated June 7, 2022, Dr. Mark Stephen Wilson, an orthopedic surgery specialist, related the duties of appellant's federal employment including standing on a concrete floor; repetitiously scanning and keying in parcels, magazines, and packages; lifting, pushing, and pulling heavy containers; pulling and loading carts and sacks of mail; moving, and emptying heavy equipment; lifting tubs of flats weighing up to 20 pounds; lifting first class spurs weighing up to four pounds; lifting priority flat rate boxes weighing up to 70 pounds; bending forward to pick up parcels, twisting; and sorting magazines by retrieving them from tubs. He diagnosed thoracic spine sprain/strain, facet disease inflammatory spondylopathy, and other spondylosis with myelopathy. With respect to the lumbar spine, Dr. Wilson diagnosed sprain/strain, facet disease inflammatory spondylopathy, other spondylosis with myelopathy, intervertebral disc disorder with radiculopathy, radiculopathy, and other spondylosis of the lumbosacral region. He opined that

appellant sustained an injury to her thoracic and lumbar spine based upon duties of her federal employment.

In a progress report dated July 13, 2022, Dr. Wilson opined that as a result of her federal duties, she developed significant back pain, intermittent right radicular symptoms radiating into the right lower extremity, muscle spasms and trigger points about the thoracic and lumbar regions. He indicated that cumulative trauma disorders were injuries of the musculoskeletal system including bone, joints, muscles, tendons, ligaments, and cartilage due to overuse syndrome and repetitive motion. Dr. Wilson further related that cumulative trauma symptoms developed from accumulation of repeated small injuries or stresses to the musculoskeletal system as a response to excessive or repeated demands without adequate recovery time. He recommended work restrictions.

By decision dated August 23, 2022, OWCP reviewed the merits of appellant's claim and denied modification of its May 11, 2022 decision. It found that the June 7 and July 13, 2022 reports of Dr. Wilson were insufficiently rationalized to establish causal relationship between duties of her federal employment and her diagnosed conditions.

OWCP thereafter received a progress report dated August 10, 2022, wherein Dr. Wilson repeated his opinion that, as a result of her federal duties, appellant developed significant back pain, intermittent right radicular symptoms radiating into the right lower extremity, muscle spasms and trigger points in the thoracic and lumbar regions. This report repeated the information in the progress report dated July 13, 2022. Dr. Wilson recommended work restrictions.

On November 20, 2022 appellant again requested reconsideration. With her request, she included an undated statement, in which she related that Dr. Wilson had on many occasions submitted documentation regarding the cause of her diagnosed conditions.

In a progress report dated November 2, 2022, Dr. Wilson again opined that as a result of appellant's federal duties, she developed significant back pain, intermittent right radicular symptoms radiating into the right lower extremity, muscle spasms and trigger points in the thoracic and lumbar regions. This report repeated the information in the progress reports dated July 13 and August 10, 2022. Dr. Wilson recommended work restrictions.

By decision dated February 9, 2023, OWCP denied appellant's request for reconsideration, 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.<sup>2</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>3</sup> One such limitation is that the request for reconsideration

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<sup>2</sup> This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or a gainst payment of compensation at any time on [his] own motion or on application.” 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607.

must be received by OWCP within one year of the date of the decision for which review is sought.<sup>4</sup> A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.<sup>5</sup> When a timely request 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.<sup>6</sup>

### ANALYSIS

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).

Appellant's November 20, 2022 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant submitted progress reports dated August 10 and November 2, 2022, wherein Dr. Wilson opined that as a result of appellant's federal duties, she developed significant back pain, intermittent right radicular symptoms radiating into the right lower extremity, muscle spasms and trigger points in the thoracic and lumbar regions of the spine. These reports are substantially similar to the wording in his progress report dated July 13, 2022. The Board has found that medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.<sup>7</sup> Appellant also submitted an undated statement with her reconsideration request. While this evidence is new, the underlying issue in this case is medical in nature. 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.<sup>8</sup> As such, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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<sup>4</sup> *Id.* at § 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 (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.

<sup>5</sup> *Id.* at § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.608(a), (b).

<sup>7</sup> *See B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>8</sup> *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

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 her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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