

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

N.K., Appellant)

and)

U.S. POSTAL SERVICE, NEWARK)
DISTRIBUTION CENTER, Jersey City, NJ,)
Employer)
-----)

**Docket No. 23-0435
Issued: September 28, 2023**

Appearances:

*James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 1, 2023 appellant, through counsel, filed a timely appeal from a September 1, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated January 19, 2022, 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 to review the merits of this case.³

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 an 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.*

³ The Board notes that, following the September 1, 2022 decision, a appellant submitted additional evidence to OWCP. 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 February 26, 2020 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck on February 14, 2020 when driving a vehicle while in the performance of duty. She stopped work on the claimed date of injury.

OWCP accepted the claim for cervical spine sprain and lumbar spine sprain. It paid appellant wage-loss compensation on the supplemental rolls, effective March 21, 2020, and on the periodic rolls, effective September 13, 2020.

In a development letter dated February 25, 2021, OWCP informed appellant that the medical record indicated possible consequential conditions of cervical radiculopathy, and C4-5, C5-6, and C6-7 disc displacement with radiculopathy, cervicgia, and occipital neuralgia. It requested that she obtain a detailed narrative report from her physician with medical rationale explaining whether the additional conditions were causally related to the accepted February 14, 2021 employment injury. OWCP afforded appellant 30 days to respond.

In a February 25, 2021 report, Dr. Joseph Ibrahim, a Board-certified physiatrist, diagnosed cervical and lumbar spine sprains, cervicgia, occipital neuralgia, cervical radiculopathy, cervical disc displacement at C4-5, C5-6, and C6-7, low back pain, bilateral shoulder pain, and long-term use of opiate analgesic.⁴

On March 23, 2021 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Paul Teja, an osteopathic physician Board-certified in orthopedic surgery, for a second opinion examination regarding the nature and extent of her accepted conditions.

In an April 13, 2021 report, Dr. Teja reviewed the SOAF and medical record. On examination, he observed tenderness to palpation of the cervical and thoracic paraspinal muscles bilaterally and the left lumbar paraspinal muscles, limited cervical and lumbar ranges of motion, and normal neurologic findings in all extremities. Dr. Teja noted that appellant's subjective symptoms did not correspond to objective findings on examination. He diagnosed a cervical spine sprain, lumbar spine sprain, and age-related, nonoccupational cervical spondylosis. Dr. Teja opined that the accepted employment injury had ceased without residuals and that no further treatment was indicated. He returned appellant to full-duty work with no restrictions.

By decision dated May 14, 2021, OWCP denied expansion of the acceptance of appellant's claim to include cervical radiculopathy, cervical disc disorder at C4-5, C5-6, and C6-7 with radiculopathy, cervicgia, and occipital neuralgia.

On May 20, 2021 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the April 13, 2021 report of Dr. Teja, who opined

⁴ Dr. Ibrahim reiterated these findings in reports dated March 26 and April 23, 2021.

that the accepted conditions had resolved without disability or residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In response, appellant submitted a March 2, 2020 opiate screening test order form and a May 24, 2021 billing form.

In a May 27, 2021 report, Dr. Ibrahim reiterated his prior findings and diagnoses. He noted his review of Dr. Teja's April 13, 2021 opinion that appellant had no objective findings indicative of cervical radiculopathy, and that OWCP had accepted only cervical and lumbar sprain. Dr. Ibrahim opined that "the diagnosis of cervical sprain/strain along with cervical herniated discs" at C4, C5, C6, and C7, lumbar pain, and constant headaches, were causally related to the February 14, 2020 employment injury. He recommended a lumbar magnetic resonance imaging (MRI) scan. In an attending physician's report (Form CA-20) of even date, Dr. Ibrahim found appellant totally disabled from work. In a May 27, 2021 slip, he prescribed additional physical therapy.

A June 11, 2021 lumbar MRI scan demonstrated minimal central canal stenosis at L3-4 and L4-5 due to disc bulges and a congenitally small canal, and mild multilevel degenerative changes.

In a June 29, 2021 report, Dr. Ibrahim recommended lumbar epidural steroid injections.

On May 24, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the May 14, 2021 expansion decision.

On July 13, 2021 Dr. Ibrahim performed a lumbar intra-articular injection at L5-S1.

By decision dated July 21, 2021, OWCP finalized its termination of appellant's wage-loss and medical compensation benefits, effective July 22, 2021. It found that the weight of the medical evidence rested with the second opinion report of Dr. Teja, which established that she had no continuing disability or residuals from work causally related to her February 14, 2020 employment injury.

In a July 27, 2021 report, Dr. Ibrahim recounted that the July 13, 2021 intra-articular injection relieved appellant's symptoms for approximately two days, but that her symptoms subsequently returned.

On August 10, 2021 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review from the July 21, 2021 termination decision.

In an August 17, 2021 report, Dr. Ibrahim recounted a history of injury and treatment. On examination, he observed a slightly antalgic gait, restricted cervical and lumbar motion with paraspinal tenderness, a positive flexion, abduction, and external rotation (FABER) test on the left, altered sensory testing in the right C6-7 dermatome, and no Waddell's signs. Dr. Ibrahim opined that appellant remained totally disabled from work due to cervical disc herniations and a lumbar disc bulge. He found that these conditions had been caused by the February 14, 2020 employment injury.

On September 9, 2021 appellant requested reconsideration of OWCP's May 14, 2021 decision denying expansion of the claim.

During the hearing, held on November 5, 2021, an OWCP hearing representative took jurisdiction over both the expansion and termination decisions.

In a December 3, 2021 report, Dr. Ibrahim reiterated his prior findings and diagnoses and disagreed with Dr. Teja's opinion. He explained that the C4-5 and C6-7 disc herniations, constant headaches, and low back pain were all related to the February 14, 2020 employment injury as these complaints developed following that incident. Dr. Ibrahim found appellant totally disabled from work.

By decision dated January 19, 2022, OWCP's hearing representative affirmed the May 14 and July 21, 2021 decisions. She found that Dr. Ibrahim's medical reports were insufficiently rationalized to create a conflict with Dr. Teja's well-reasoned second opinion report.

On February 14, 2022 appellant requested reconsideration of OWCP's hearing representative's January 19, 2022 decision. She submitted March 2 and 4, 2020 opiate screening and patient tracking forms.

By decision dated May 5, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On June 3, 2022 appellant requested reconsideration.

OWCP received a March 4, 2020 opioid screening test report.

In a report dated May 31, 2022, Dr. Ibrahim reiterated his description of the February 14, 2020 employment injury and treatment history. On examination, performed on May 16, 2022 he noted a bilaterally positive FABER test, and positive facet joint loading maneuvers in the right lumbar spine.

In an August 11, 2022 report, Dr. Ibrahim noted unchanged findings on examination. He recommended additional cervical and lumbar imaging studies.

OWCP also received duplicate copies of the March 2, 2020 opiate screening test order form and March 10, 2020 cervical MRI scan.

By decision issued September 1, 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.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a

⁵ 5 U.S.C. § 8128(a); *see R.G.*, Docket No. 21-1098 (issued March 28, 2022); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

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

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).

Appellant's June 3, 2022 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that appellant is 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).¹⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence with her June 3, 2022 request for reconsideration. The underlying issues are whether appellant met her burden of proof to expand OWCP's acceptance of the claim to include additional cervical and lumbar conditions, whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, and whether appellant has met her burden of proof to establish continuing disability or residuals on and after July 22, 2021. The March 4, 2020 screening report does not address any of these issues. The Board has held that the submission of evidence or argument, which does not address the particular issues involved does not constitute a basis for reopening the case.¹¹ Dr. Ibrahim, in his May 31 and August 11, 2002 reports, repeated

⁶ 20 C.F.R. § 10.606(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).

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

⁹ *Id.* at § 10.608(b); *C.P.*, Docket No. 22-1004 (issued February 24, 2023); *Y.M.*, Docket No. 22-0327 (issued August 29, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *Id.* at § 10.606(b)(3); *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹¹ *Y.M.*, *supra* note 9; *see R.G.*, Docket No. 21-1098 (issued March 28, 2022); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

his prior findings and opinions. The Board finds that his reports are cumulative and duplicative of his prior reports of record. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹² OWCP also received duplicate copies of the March 2, 2020 opiate screening test order form and March 10, 2020 cervical MRI scan. As previously noted, evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹³ No other relevant and pertinent new evidence was submitted. For these reasons, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁴

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.¹⁵

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 *Y.M., id.*; *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹³ *Id.*

¹⁴ *See S.A.*, Docket No. 21-0813 (issued December 27, 2021); *E.V.*, Docket No. 16-0080 (issued June 21, 2016).

¹⁵ *See Y.M., supra* note 9; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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