

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

C.E., Appellant)	
)	
and)	Docket No. 23-0615
)	Issued: September 19, 2023
U.S. POSTAL SERVICE, GENESEO POST)	
OFFICE, Geneseo, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
Lisa Varughese, Esq., 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 March 22, 2023 appellant, through counsel, filed a timely appeal from an October 5, 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 September 8, 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 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 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).

FACTUAL HISTORY

On March 14, 2018 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2018 he sustained a right shoulder injury when he opened a mailbox and felt right shoulder pain while in the performance of duty. He stopped work on March 22, 2018.

Appellant submitted an authorization for examination and/or treatment (Form CA-16), which was signed by his immediate supervisor on March 14, 2018.

In a duty status report (Form CA-17) dated March 22, 2018, Dr. David Cywinski, a Board-certified radiologist, listed the date of injury as March 13, 2018 and indicated a diagnosis of tight rotator cuff tendinitis.

In a March 27, 2018 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a March 26, 2018 letter, the employing establishment challenged appellant's claim.

Appellant submitted a March 22, 2018 narrative report wherein Dr. Cywinski recounted that appellant reported injuring his right shoulder when he placed mail in a mailbox on March 13, 2018. Dr. Cywinski diagnosed right rotator cuff tendinitis with impingement. In an April 10, 2018 narrative report, he opined that appellant's right shoulder condition was causally related to the March 13, 2018 employment incident. In April 10 and 27, 2018 form reports, Dr. Cywinski diagnosed right rotator cuff tear/rupture (not trauma), and right shoulder impingement syndrome.

In an undated statement received by OWCP on April 20, 2018, appellant further described the nature of his claimed March 13, 2018 employment injury. He maintained that he had not suffered an injury to his right shoulder prior to March 13, 2018.

By decision dated May 3, 2018, OWCP accepted the March 13, 2018 employment incident, however, it denied appellant's claim, finding that he failed to submit sufficient medical evidence to establish a medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or condition due to the accepted employment factors.

On February 26, 2019 appellant requested reconsideration of the May 3, 2018 decision.

Appellant submitted May 16, 20, and 30, 2018 reports, wherein Dr. Cywinski discussed the March 13, 2018 employment incident, and diagnosed right shoulder conditions of adhesive

capsulitis, rotator cuff tendinitis, and impingement. In these reports, he opined that the diagnosed right shoulder conditions were “wholly” related to the March 13, 2018 employment incident.

In October 1, 2018 and January 7, and 28, 2019 reports, Dr. Nicholas Loffredo, an osteopath and Board-certified orthopedic surgeon, detailed the March 13, 2018 employment incident and diagnosed the right shoulder conditions of rotator cuff tendinopathy, adhesive capsulitis, impingement syndrome, and incomplete rotator cuff tear/rupture. In the October 1, 2018 and January 7, 2019 reports, he checked a box marked “Yes” to indicate that the diagnosed conditions were caused by the March 13, 2018 employment incident.

By decision dated May 23, 2019, OWCP denied modification of its May 3, 2018 decision.

On May 22, 2020 appellant again requested reconsideration of the May 23, 2019 decision.

Appellant submitted an April 6, 2020 report wherein Dr. Loffredo indicated that appellant’s “problem list” included right shoulder capsulitis, disorder of right shoulder, and incomplete right rotator cuff tear/rupture. In a May 18, 2020 letter, Dr. Loffredo described appellant’s work duties, including sorting and delivering mail, and opined that his right shoulder condition was causally related to his repetitive work duties.

By decision dated August 20, 2020, OWCP denied modification of its May 23, 2019 decision.

On August 17, 2021 appellant requested reconsideration of the August 20, 2020 decision.

Appellant submitted July 6 and 11, 2021 reports wherein Dr. Loffredo opined that appellant’s right shoulder condition was causally related to his repetitive work duties.

By decision dated September 8, 2021, OWCP denied modification of the August 20, 2020 decision. It explained that the issue before it was whether appellant established a March 13, 2018 traumatic injury and found that he had failed to do so. OWCP indicated that, if he was claiming a work-related occupational disease, he could file a form for a separate occupational disease claim (Form CA-2).

On August 29, 2022 appellant requested reconsideration of the September 8, 2021 decision. In an accompanying statement, he argued that his claim was improperly developed as a traumatic injury claim, rather than as an occupational disease claim. Appellant maintained that the work event on March 13, 2018 was the “last straw” in a chain of events which included engaging in reaching, lifting, pulling, and pushing objects at work on earlier dates. He submitted a Form CA-2 which he had completed on August 26, 2022. In the form, appellant asserted that his right shoulder occupational disease condition was caused by constant use of the shoulder throughout his workday. He indicated that on March 13, 2018 he first became aware of his claimed right shoulder condition and its relation to his federal employment.

By decision dated October 5, 2022, OWCP denied appellant’s request for reconsideration of the merits of his 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 or her own motion or on application.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

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).

³ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁶ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

On August 29, 2022 appellant filed a timely request for reconsideration of a September 8, 2021 decision.¹⁰ The Board finds, however, that he neither established that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Appellant argued that his claim was improperly developed as a traumatic injury claim, rather than as an occupational disease claim. He maintained that the employment incident on March 13, 2018 was the “last straw” in a chain of events, which included engaging in reaching, lifting, pulling, and pushing objects at work on earlier dates. However, OWCP had previously considered and rejected this same argument when it denied appellant’s claim. 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 Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant submitted a Form CA-2, completed on August 26, 2022, in which he detailed his occupational disease claim. While this evidence is new, such nonmedical evidence is not relevant because it does not directly address the underlying issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish a work-related injury. 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.¹² Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 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.¹³

CONCLUSION

The Board find that OWCP properly denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁰ See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹¹ See *supra* note 8.

¹² See *supra* note 9.

¹³ Appellant submitted an a uthorization for examination and/or treatment (Form CA-16) which was signed by his immediate supervisor on March 14, 2018. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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