

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

R.M., Appellant)	
)	
and)	Docket No. 23-0666
)	Issued: September 26, 2023
SOCIAL SECURITY ADMINISTRATION,)	
Orlando, FL, Employer)	
)	

Appearances:
Wayne Johnson, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 9, 2023 appellant, through counsel, filed a timely appeal from an October 11, 2022 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 July 26, 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 to review 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 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 October 16, 2017 appellant, then a 50-year-old service representative, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2017 she injured her left knee when she tripped over a mail bin while in the performance of duty. OWCP accepted appellant's claim for exacerbation of degenerative joint disease of the left knee and sprain of the anterior cruciate ligament of the left knee.

In a report dated April 18, 2018, Dr. Michael Kindya, a Board-certified orthopedic surgeon, submitted a work capacity evaluation for musculoskeletal conditions (Form OWCP-5c). He advised that appellant was capable of returning to work without restrictions. OWCP also received a Form OWCP-5c from Dr. Kindya dated May 14, 2018. Dr. Kindya advised that appellant was unable to perform duties of her usual job without restrictions at that time. He stated that she should work no more than six hours per day at light duty. In an accompanying report of the same date, Dr. Kindya diagnosed left knee pain, noting that it was atraumatic in nature.

In a report dated May 19, 2018, Dr. Jennifer Monroe, an emergency medicine specialist, noted that appellant's left knee had given out at work. She diagnosed left knee pain.

On August 15, 2018 appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the periods March 8 through April 27, 2018 and June 11 through July 30, 2018. In an attached Time Analysis Form (Form CA-7a) dated August 15, 2018, she claimed leave without pay intermittently for the claimed periods from between 0.25 and 8 hours due to pain from her injury. On September 25, 2018 appellant filed a Form CA-7 claiming leave without pay for September 24, 2018.

By decision dated October 11, 2018, OWCP denied appellant's claim for compensation for disability from work commencing March 8, 2018.

On October 1, 2018 appellant filed a Form CA-7 claiming disability from work on September 28, 2018.

On October 11, 2019 appellant, through counsel, requested reconsideration of OWCP's October 11, 2018 decision.

OWCP continued to receive medical evidence. In a report dated July 16, 2019, Dr. Steve Nguyen, a Board-certified orthopedic surgeon, examined appellant for left knee pain. He recommended total knee replacement surgery.

By decision dated May 12, 2020, OWCP denied modification of its October 11, 2018 decision.

After further development of the record, OWCP authorized the requested left knee surgery. It received hospital records indicating that appellant underwent quadricepsplasty and left total knee arthroplasty on December 8, 2020, performed by Dr. Nguyen.

On May 12, 2021 appellant, through counsel, requested reconsideration of OWCP's May 12, 2020 decision. Counsel argued that appellant was disabled from work due to the total knee replacement.

By decision dated July 26, 2021, OWCP reviewed the merits of appellant's claim and affirmed the denial of her claims for compensation in part for the periods March 8 through April 27, 2018 and June 11, 2018 through July 15, 2019. It vacated the May 12, 2020 decision in part finding that she was entitled to compensation for disability commencing July 16, 2019.

Appellant submitted a Form CA-7 for disability from work from July 16, 2019 through November 10, 2021. She also resubmitted the December 8, 2020 surgical report.³

On July 26, 2022 appellant, through counsel, requested reconsideration of OWCP's July 26, 2021 decision.

By decision dated October 11, 2022, OWCP denied appellant's request for reconsideration without reviewing the merits of her claim.

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.⁴

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 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

³ A letter from the employing establishment indicated that appellant retired from the employing establishment effective April 12, 2019.

⁴ 5 U.S.C. § 8128(a); *see 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).

⁵ 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).

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 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.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).

Appellant's July 26, 2022 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that 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 resubmitted the July 15, 2022 surgical report, which was previously of record. Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Appellant also submitted a letter from the employing establishment indicating that she retired from the employing establishment effective April 12, 2019. While this evidence is new, the underlying issue in this case is medical in nature. Therefore, this evidence is irrelevant and is insufficient to warrant a merit review. As appellant failed to provide relevant and pertinent new evidence with her request for reconsideration, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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.

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).

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

⁸ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *D.M.*, Docket No. 18-1003 (issued July 16, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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