

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

C.M., Appellant)	
)	
and)	Docket No. 24-0061
)	Issued: April 9, 2024
DEPARTMENT OF THE INTERIOR, U.S. FISH)	
& WILDLIFE SERVICE, Valley Stream, NY,)	
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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 30, 2023 appellant filed a timely appeal from a June 15, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 21, 2022, 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 over 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 14, 2019 appellant, then a 45-year-old wildlife inspector, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2017 she sustained a back injury when she attempted to open a container with a tool that slipped causing her to twist/lunge while in the performance of duty. She also claimed that her back injury was related to her prior June 1, 2016 work-related injuries of lumbosacral strain and sprain, bulging disc at L4-5, post-traumatic lumbar facet syndrome and S1 lumbar radiculopathy.³ Appellant did not stop work.

On April 20, 2019 appellant completed an OWCP development questionnaire and again noted that, prior to her claimed May 12, 2017 employment-related injury, she was diagnosed as having sprain of ligaments of the lumbar spine, a bulging lumbar disc, and lumbar pain with radiculopathy. She indicated that she was also diagnosed as having osteoarthritis of the lumbar spine, degenerative disc disease, and lumbago syndrome. Appellant related that some of these conditions had been previously accepted as employment related under OWCP File No. xxxxxx670. She contended that relevant medical records were available in that file and related to her June 1, 2016 employment injury.

By decision dated May 14, 2019, OWCP accepted that the May 12, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed lumbar conditions were causally related to the accepted employment incident.

On August 2, 2019 appellant, through her then-representative, requested reconsideration and submitted new evidence. The then-representative contended that the medical evidence was sufficient to establish causal relationship between appellant's federal employment and her diagnosed conditions.

By decision dated August 8, 2019, OWCP denied modification of its May 14, 2019 decision.

On February 28, 2020 appellant, through her then-representative, again requested reconsideration and submitted new evidence.

OWCP, in a March 10, 2020 decision, denied modification of its August 8, 2019 decision.

² Docket No. 20-1451 (issued July 26, 2021).

³ OWCP assigned the current claim OWCP File No. xxxxxx640. The record reflects that appellant has a previously accepted June 1, 2016 traumatic injury claim under OWCP File No. xxxxxx670 for sprain of the lumbosacral spine, strain of the lumbosacral spine, bulging disc at L4-5, post-traumatic lumbar facet syndrome, and left S1 lumbar radiculopathy.

On July 29, 2020 appellant, through her then-representative, appealed to the Board. By order dated July 26, 2021, the Board set aside the March 10, 2020 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx640 and xxxxxx670 and issue a *de novo* decision.⁴

OWCP subsequently administratively combined OWCP File Nos. xxxxxx640 and xxxxxx670, with the latter serving as the master file.

By *de novo* decision dated January 21, 2022, OWCP again denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted May 12, 2017 employment incident.

On January 21, 2023 appellant, through her then-representative, requested reconsideration. Appellant's then-representative reiterated that the evidence previously of record was sufficient to establish that appellant's diagnosed conditions were causally related to the accepted factors of her federal employment.

In support of her reconsideration request, appellant resubmitted evidence which was previously of record.

By decision dated June 15, 2023, 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 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.⁶

⁴ *Supra* note 2.

⁵ 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).

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).

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).

In support of her January 21, 2023 request for reconsideration, appellant, through her then-representative, reiterated that the medical evidence of record was sufficient to establish causal relationship between appellant's federal employment and her diagnosed conditions. However, this contention was previously addressed by OWCP in its May 14, 2019 and January 21, 2022 decisions, and, as such, she did not advance a new and relevant legal argument.¹⁰ The Board has held that the submission of evidence or argument that repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case.¹¹ Appellant, therefore, has not demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a 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).¹²

In further support of her reconsideration request, appellant resubmitted medical evidence previously of record. As noted, the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument previously of record does not constitute a basis for reopening a case.¹³ On reconsideration, appellant did not submit any new evidence.

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 (February 2016). 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); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *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).

¹⁰ *S.H.*, Docket No. 22-1179 (issued January 17, 2023); *M.D.*, Docket No. 20-0126 (issued September 11, 2020); *S.E.*, Docket No. 17-0222 (issued December 21, 2018); *T.H.* Docket Nos. 17-1578 & 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *L.R.*, Docket No. 22-1310 (issued April 4, 2023); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹² 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020).

¹³ *Supra* note 11.

Therefore, she also failed to satisfy the third above-noted 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).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ 20 C.F.R. § 10.606(b)(3)(iii); *A.D.*, Docket No. 23-0148 (issued May 22, 2023); *L.R.*, *supra* note 11; *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁵ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).