

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

_____)	
T.P., Appellant)	
)	
and)	Docket No. 23-0691 & 24-0176
)	Issued: January 11, 2024
DEPARTMENT OF THE AIR FORCE,)	
ANDREWS AIR FORCE BASE,)	
Camp Springs, MD, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 17, 2023 appellant filed a timely appeal from a December 22, 2022 merit decision, and a March 23, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxx768. The Clerk of the Appellate Boards assigned Docket No. 23-0691. Also on April 17, 2023, appellant filed a timely appeal from a December 22, 2022 merit decision and a March 22, 2023 nonmerit decision of OWCP under OWCP File No. xxxxxx815. The Clerk of the Appellate Boards assigned that appeal Docket No. 24-0176. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of these cases.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 22 and 23, 2023 decisions, appellant submitted additional evidence on appeal to the Board. 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she filed timely claims for compensation pursuant to 5 U.S.C. § 8122(a); and (2) whether OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 31, 2022 appellant, then a 64-year-old accountant, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2018 she was exposed to electromagnetic waves while in the performance of duty. She indicated that she experienced Havana Syndrome at the employing establishment and at her home. Appellant also alleged that she was attacked with electromagnetic energy on October 18, 2018 on the way home from her brother's funeral in Pennsylvania, in the mornings on the way to work, and at retail stores in Maryland. The record reflects that the employing establishment terminated her employment on August 12, 2019 during her probationary period. Appellant further related that she was diagnosed with a brain tumor on August 6, 2020 had "eye attacks-neuro ophthalmology" on July 22, 2022. Her supervisor, controverted the claim and noted that appellant was not in the performance of duty when the incidents allegedly occurred. OWCP assigned this claim OWCP File No. xxxxxx768.

Appellant also filed an occupational disease claim (Form CA-2) on November 2, 2022 alleging that she was subjected to electromagnetic energy waves which caused her brain tumor. She noted that she first became aware of her condition on October 6, 2018 and realized its relation to her federal employment on that date. Appellant alleged that she sent email correspondence to the National Background Investigations Bureau and the Office of Personnel Management on October 6 and 9, 2018 requesting their assistance. Appellant's supervisor, indicated that appellant first reported her condition to the employing establishment on November 2, 2022. OWCP assigned this claim OWCP File No. xxxxxx815.³

A notification of personnel action (Standard Form 50-B) revealed that appellant was hired on April 30, 2018, and a subsequent Standard Form 50-B revealed that she was terminated during her probationary period on August 12, 2019.

Appellant submitted an August 6, 2022 magnetic resonance imaging (MRI) scan which related an impression of lesion in the right anterior temporal lobe suspicious for low grade neoplasm, with a differential diagnosis of atypical perivascular space. Follow up was recommended in three months.

In development letters dated November 21, 2022, OWCP informed appellant of the deficiencies of her claims. It advised her of the type of additional evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested

³ Appellant's claims have been administratively combined, with OWCP File No. xxxxxx815 serving as the master file.

that the employing establishment provide additional information, including comments from a knowledgeable supervisor. OWCP afforded both parties 30 days to respond.

On November 21 and 25, 2022 the employing establishment controverted appellant's claims. M.T., an injury compensation specialist, confirmed that appellant's employment was terminated on August 12, 2019, and noted that her claims did not satisfy the statutory time requirements. M.T. further noted that there was no medical evidence containing a diagnosis of a condition causally related to appellant's federal employment.

In a November 21, 2022 email to OWCP, appellant alleged that, prior to August 12, 2019 her supervisor, Dr. O.F., asked her to repeat her home address, after she had been attacked by electromagnetic waves in the early morning hours, to determine whether electromagnetic energy waves had caused her memory loss. She also provided copies of emails that she sent to the Secretary of Defense on August 19 and 14, 2022 regarding electromagnetic energy attacks.

In a November 28, 2022 response, appellant noted that she was employed from April 30, 2018 to August 12, 2019. She alleged that on November 27, 2022 the employing establishment "piped in [her] ear that it had asked her supervisor to state my 'address.'" Appellant further alleged that security knew that she was attacked by electromagnetic energy waves in July 2019, and ordered her supervisor to ask her to state her address. She alleged that she was exposed to electromagnetic energy waves at the employing establishment on a continuous basis, and requested that they "pull the CIA tapes for the verification of such." Appellant also alleged that, in 2019, the employing establishment performed a "two-hole drill down" at the top of her head/brain at her apartment, and a second consecutive drilling aimed deep into her brain. She related that she reported the incident to the police, and that she was released from her position at the employing establishment due to a mental health condition.

Appellant alleged that numerous incidents occurred after her termination on August 12, 2019 at public establishments.

In a letter dated December 13, 2022, appellant alleged that, in June 2022, her supervisor requested that appellant provide her home address and that she take sick leave. She further alleged that while commuting to and from the, employing establishment, she received exposure from low altitude electromagnetic energy waves, and that she was diagnosed with a brain tumor on the right temporal lobe on August 6, 2020. She provided a copy of a December 16, 2022 email to a Civil Rights Center representative pertaining to a job offer at the DHS. In a December 17, 2022 email, appellant alleged that illegal medical procedures were performed by the employing establishment to induce a heart attack.

By decision dated December 22, 2022, OWCP denied appellant's traumatic injury claim under OWCP File No. xxxxxx768, finding that she failed to file her claim within the requisite three-year period under section 8122(a) of FECA.

By separate decision dated December 22, 2022, OWCP denied appellant's occupational disease claim under OWCP File No. xxxxxx815, finding that she failed to file her claim within the requisite three-year period under section 8122(a) of FECA.

On January 7, 2023 appellant requested reconsideration of both December 22, 2022 decisions.

OWCP received emails from appellant dated December 30 and 31, 2022 and January 1 through 7, 2023, detailing numerous incidents involving magnetic energy waves directed at her in public places. It also received a copy of a previously-submitted August 30, 2022 email.

In a March 19, 2023 statement, appellant related incidents occurring from July 7, 2017, prior to her federal employment, incidents during her federal employment, as well as other incidents after her federal employment.

By decision dated March 22, 2023, OWCP denied appellant's request for reconsideration of the merits of her occupational disease claim under OWCP File No. xxxxxx815, pursuant to 5 U.S.C. § 8128(a).

By decision dated March 23, 2023, OWCP denied appellant's request for reconsideration of the merits of her traumatic injury claim under OWCP File No. xxxxxx768, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁸ In cases of injury on or after September 7, 1974 section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁹

⁴ *Supra* note 1.

⁵ *See S.H.*, Docket No. 22-0610 (issued October 21, 2022); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *A.S.*, Docket No. 18-1094 (issued February 7, 2019); *C.D.*, 58 ECAB 146 (2006).

⁹ 5 U.S.C. § 8122(a).

In a case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between his or her condition and his or her federal employment. Such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.¹⁰ Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of his or her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.¹¹ Section 8122(b) of FECA provides that the time for filing in latent disability cases does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.¹² It is the employee's burden to establish that a claim is timely filed.¹³

Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.¹⁴ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a) under either OWCP File No. xxxxxx815 or xxxxxx768.

With regard to OWCP File No. xxxxxx768, appellant filed her traumatic injury claim on October 31, 2022 and alleged that she was injured when she was exposed to electromagnetic waves while in the performance of duty on October 18, 2018. Because she did not file her traumatic injury claim until October 31 2022, more than three years after the alleged date of injury on October 18, 2018 she filed her traumatic injury claim outside the three-year time limitation.¹⁶

Appellant also filed an occupational disease claim (Form CA-2) on November 2, 2022 and alleged that she first became aware of her condition on October 6, 2018 and realized its relation to

¹⁰ See *G.M.*, Docket No. 18-0768 (issued October 4, 2018).

¹¹ *L.H.*, Docket No. 19-0818 (issued December 9, 2019).

¹² 5 U.S.C. § 8122(b); see also *J.E.*, Docket No. 16-1493 (issued May 7, 2018).

¹³ *A.S.*, *supra* note 8; *C.D.*, *supra* note 8.

¹⁴ 5 U.S.C. §§ 8122(a)(1), 8122(a)(2); see *J.S.*, Docket No. 22-0347 (issued September 16, 2022); see also *Larry E. Young*, 52 ECAB 264 (2001).

¹⁵ *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

¹⁶ *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *R.T.*, Docket No. 18-1590 (issued February 15, 2019); *Charles Walker*, 55 ECAB 238 (2004); see *Charles W. Bishop*, 6 ECAB 571 (1954).

her federal employment on that date. As noted, where the employee continues in the same employment after developing a condition which has been adversely affected by factors of his or her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.¹⁷ In this case, appellant's employment was terminated on August 12, 2019, which was the date of her last exposure to any factors of her federal employment. Since she did not file her occupational disease claim until November 2, 2022, the claim was filed more than three years after her last exposure to factors of her federal employment.

The Board also notes that, in cases of latent disability, the time for filing a claim does not begin to run until the claimant is aware, or by exercise of reasonable diligence, should be aware of the causal relationship between their condition and their employment.¹⁸ Appellant alleged that she first became aware of her condition and realized its relation to her federal employment on October 6, 2018 more than three years before she filed her claim until November 2, 2022. Therefore, the Board finds that she failed to comply with the three-year time limitation with regard to a latent disability.

The Board also finds that there is no evidence of record that appellant's immediate supervisor, had actual knowledge within 30 days of the alleged injury.¹⁹ Appellant argued that her immediate supervisor had actual knowledge of her condition in June 2019, because Dr. O.F. asked for her home address when filling out a payroll form. She argued that her supervisor was testing her memory because he was aware that the electromagnetic attacks caused memory loss. Appellant also noted that her supervisor requested that she take sick leave. The Board finds that appellant's allegations regarding her interactions with her supervisor do not establish that he had actual knowledge of appellant's alleged condition within 30 days of her alleged injury.

Thus, the Board finds that appellant's claims for compensation under OWCP File Nos. xxxxxx768 and xxxxxx815 were untimely filed.

LEGAL PRECEDENT -- ISSUE 2

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.²⁰

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

¹⁷ *L.H.*, *supra* note 11.

¹⁸ *See L.S.*, Docket No. 20-0705 (January 27, 2021); *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *J.M.*, Docket No. 10-1965 (issued May 16, 2011); *Larry E. Young*, 52 ECAB 264 (2001).

¹⁹ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, *id.*

²⁰ 5 U.S.C. § 8128(a); *see R.H.*, Docket No. 21-1382 (issued March 7, 2022); *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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²³ 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.²⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In her requests for reconsideration, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she 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).²⁵

The Board further finds that appellant has not provided any relevant and pertinent new evidence in support of her request for reconsideration. The evidence submitted on reconsideration reiterated appellant's contentions that her immediate supervisor was aware of her condition in June 2019, because he requested her home address when filling out her payroll form and advised her to take sick leave. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.²⁶ As such, this evidence is insufficient to warrant merit review.

²¹ 20 C.F.R. § 10.606(b)(3); *see R.H., id.; 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).

²² *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.

²³ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

²⁴ *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).

²⁵ *See T.F.*, Docket No. 22-0573 (issued March 31, 2023); *A.A.*, Docket No. 21-0774 (issued January 11, 2022); *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

²⁶ *See D.B.*, Docket No. 22-1241 (issued April 27, 2023); *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Appellant also submitted emails documenting expansive allegations of Havana Syndrome. However, the evidence provided by appellant pertained to incidents which were irrelevant to the underlying issue of timely filing of appellant's claim. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²⁷ Appellant's expansive allegations of electromagnetic and other attacks are not relevant and pertinent new evidence because they are not pertinent to the issue of timely filing. As she failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁸ 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.²⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she filed timely claims for compensation pursuant to 5 U.S.C. § 8122(a). The Board further finds that OWCP properly denied her requests for reconsideration of the merits of her claims, pursuant to 5 U.S.C. § 8128(a).

²⁷ *C.C.*, Docket No. 22-1240 (issued June 27, 2023); *D.P.*, Docket No. 13-1849 (issued December 19, 2013).

²⁸ *C.Y.*, Docket No. 21-1049 (issued February 1, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *see also G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, *supra* note 26.

²⁹ *C.Y.*, *id.*; *M.O.*, Docket No. 21-0459 (issued December 29, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2022 and March 22 and 23, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2024
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