

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

K.F., Appellant

and

**U.S. POSTAL SERVICE, FORT MILL POST
OFFICE, Fort Mill, SC, Employer**

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**Docket No. 24-0052
Issued: March 26, 2024**

Appearances:
Appellant, pro se
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 October 26, 2023 appellant filed a timely appeal from a June 5, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated April 6, 2023, to the filing of this appeal, pursuant to the Federal

¹ Appellant's appeal request form indicates that she was seeking an appeal from a purported October 4, 2023 decision of OWCP. The case record contained correspondence from OWCP dated October 4, 2023, which merely referenced the appeal rights of the April 6, 2023 OWCP merit decision and included a new appeal request form. However, the Board finds that this letter is informational in nature and does not constitute a final adverse OWCP decision. See 20 C.F.R. §§ 501.2(c) and 501.3(a); *FR*, Docket No. 22-0827 (issued October 23, 2023); *Order Dismissing Appeal, K.S.*, Docket No. 20-1401 (issued March 17, 2021); *Order Dismissing Appeal, S.U.*, Docket No. 20-0636 (issued December 3, 2020).

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.³

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 22, 2023 appellant, then a 62-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed low back pain on or before January 6, 2023 lifting mail trays weighing up to 35 pounds, parcels weighing up to 70 pounds, pushing and pulling equipment, and bending and twisting while in the performance of duty. She noted that she first became aware of her condition and realized its relation to her federal employment on January 6, 2023. Appellant did not stop work.

In a March 6, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. By separate development letter of the same date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond. No additional evidence was received.

By decision dated April 6, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated factors of her federal employment, noting that she had not responded to the development questionnaire included with the March 6, 2023 development letter. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received a series of chart notes, physical therapy treatment notes, and physical therapy prescriptions dated from February 1 through May 10, 2023 by Dr. Yashbir S. Rana, Board-certified in emergency and occupational medicine. Dr. Rana recounted that, on an unspecified date, appellant experienced sharp lumbar pain when a tray of mail fell on a package she was lifting from a vehicle, and that she had injured the right side of her neck when twisting while delivering mail in a vehicle. He also noted a history of an occupational ankle fracture in 2019. Dr. Rana obtained x-rays of the cervical and lumbar areas of the spine, which demonstrated multilevel disc degeneration, degenerative joint disease, and degenerative changes in the bilateral hips. He diagnosed a lumbar nerve root injury, cervical radiculopathy, and unspecified

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 5, 2023 decision, OWCP received additional evidence. 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.*

osteoarthritis. Dr. Rana placed appellant on modified duty. He prescribed physical therapy and a cervical collar.

On May 30, 2023 appellant requested reconsideration.

By decision dated June 5, 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.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

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).

⁴ 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).

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).

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 (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.

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); *N.K.*, Docket No. 23-0435 (issued September 28, 2023); *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).

Appellant's May 30, 2023 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).⁹

In support of her request for reconsideration, appellant submitted medical evidence by Dr. Rana. However, the underlying issue on reconsideration was whether she met her burden of proof to establish an injury in the performance of duty, as alleged, which is factual in nature. 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.¹⁰ As such, 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).¹¹

The Board, accordingly, finds that OWCP properly determined that appellant did not meet any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

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).

⁹ *Id.* at § 10.606(b)(3); *N.K.*, *id.*; *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).

¹⁰ *R.H.*, Docket No. 23-0033 (issued September 20, 2023); *C.B.*, Docket No. 19-0419 (issued July 22, 2019); *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ 20 C.F.R. § 10.606(b)(3)(iii); *see R.H.*, *id.*; *N.K.*, *supra* note 8; *S.A.*, Docket No. 21-0813 (issued December 27, 2021); *E.V.*, Docket No. 16-0080 (issued June 21, 2016).

¹² *See R.H.*, *supra* note 10; *Y.M.*, *supra* note 8; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2024
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