

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

S.H., Appellant)	
)	
and)	Docket No. 25-0157
)	Issued: February 19, 2025
DEPARTMENT OF VETERANS AFFAIRS,)	
G.V. (SONNY) MONTGOMERY VA MEDICAL)	
CENTER, Jackson, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2024 appellant filed a timely appeal from a September 10, 2024 merit decision and October 30, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish her claim for wage-loss compensation for intermittent time lost from work to obtain medical treatment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 30, 2024 decision, a appellant submitted additional evidence to OWCP. 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.*

during the period May 1 through 15, 2024, causally related to her accepted September 6, 2022 employment injury; and (2) 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 September 14, 2022 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2022 she injured her left ankle when she tripped over extension cord wiring and oxygen tubing during a veteran's home visit while in the performance of duty. OWCP accepted her claim for sprain of unspecified ligament of left ankle and unspecified sprain of left foot. Appellant was released to full duty on February 27, 2023.

On June 14, 2024 appellant filed a claim for compensation (Form CA-7) claiming intermittent disability from work for the period April 29 through June 11, 2024. The accompanying time analysis form (Form CA-7a) indicated that she used 1.50 hours of leave without pay (LWOP) on April 29, 2024 for a physical therapy appointment; 1.00 hour of LWOP on May 1, 2024 for a physical therapy appointment; 2.0 hours of LWOP on May 2, 2024 for a physical therapy appointment; 1.0 hour of LWOP on May 6, 8, and 15, 2024 to attend physical therapy appointments; and 1.50 hours of LWOP on June 11, 2024 to attend a medical appointment.

In a development letter dated, June 18, 2024, OWCP informed appellant that it would authorize payment for 1.50 hours on April 29, 2024 and 1.50 hours on June 11, 2024. It also informed her of the deficiencies of her claim for wage-loss compensation to obtain medical care for the period May 1 through 15, 2024. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

By decision dated September 10, 2024, OWCP denied appellant's claim for wage-loss compensation, for the period May 1 through 15, 2024, for intermittent time lost from work to obtain medical treatment causally related to the accepted September 6, 2022 employment injury.

On October 28, 2024, appellant requested reconsideration. She asserted that she had lost time from work on May 1, 2, 6, 8, and 15, 2024 to attend medical appointments. No additional medical evidence was received.

By decision dated October 30, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.³ A claimant is entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related

³ 5 U.S.C. § 8103(a).

condition.⁴ However, OWCP's obligation to pay for expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition.⁵ Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.⁶ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.⁷ For a routine medical appointment, a maximum of four hours of compensation may be allowed.⁸ However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish her claim for wage-loss compensation for intermittent time lost from work to obtain medical treatment during the period May 1 through 15, 2024, causally related to her accepted September 6, 2022 employment injury.

As was noted above, OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹⁰ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed.¹¹

As appellant has not submitted medical evidence establishing intermittent time lost from work to obtain medical treatment during the period May 1 through 15, 2024, causally related to her accepted September 6, 2022 employment injury, the Board finds that she has not met her burden of proof.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013); see *T.S.*, 24-0909 (issued November 25, 2024); *S.M.*, Docket No. 17-1557 (issued September 4, 2018).

⁵ *H.S.*, Docket No. 23-0557 (issued October 5, 2023); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981).

⁶ *Id.*; see also *S.M.*, *supra* note 4.

⁷ *Supra* note 4 at Chapter 2.901.19a(3).

⁸ *J.B.*, Docket No. 22-1301 (issued March 26, 2024); *A.F.*, Docket No. 20-0522 (issued November 4, 2020).

⁹ *Supra* note 4 at Chapter 2.901.19c.

¹⁰ *Supra* note 4.

¹¹ *Id.*

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.

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.¹²

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.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

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 her request for reconsideration, appellant asserted that she had lost time from work to attend medical appointments on intermittent dates from May 1 through 15, 2024. Appellant's reconsideration request does not advance a new legal argument not previously considered, nor does it show that OWCP erroneously applied or interpreted a specific point of law. Thus, appellant

¹² 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

¹³ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ *Id.* at § 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). *See also* Chapter 2.1602.4b.

¹⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *S.B.*, Docket No. 24-0703 (issued December 13, 2024); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).¹⁷

Appellant did not submit pertinent new and relevant evidence in support of her request for reconsideration. Therefore, appellant is not entitled to further review of the merits of her 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 under 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 appellant has not met her burden of proof to establish her claim for wage-loss compensation for intermittent time lost from work to obtain medical treatment during the period May 1 through 15, 2024, causally related to her accepted September 6, 2022 employment injury. The Board further 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 September 10 and October 30, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 19, 2025
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).