

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

S.B., Appellant	)	
	)	
and	)	<b>Docket No. 17-2015</b>
	)	<b>Issued: August 20, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Farmington Hills, MI, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 28, 2017 appellant, through counsel, filed a timely appeal from a September 12, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> As more than 180 days elapsed from the last merit decision dated August 25, 2016 to

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<sup>1</sup> 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.

<sup>2</sup> The Board notes that appellant did not appeal from OWCP's August 1, 2017 merit decision.

the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>4</sup>

### **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 May 17, 2013 appellant, a 51-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her head, shoulder, and arms on May 16, 2013 as a result of a truck lift breaking while she was standing on it. OWCP accepted the claim for neck sprain, thoracic sprain, lumbar sprain, face contusion, brachial neuritis or radiculitis, and closed fracture of rib (5<sup>th</sup> rib anterior chest wall).

By decision dated March 2, 2016, OWCP terminated appellant's compensation benefits based on a second opinion report dated October 2, 2015 from Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, who found that appellant's employment-related conditions had ceased without residuals.

On March 29, 2016 appellant requested a review of the written record by a representative of the Branch of Hearings and Review.

By decision dated August 25, 2016, an OWCP hearing representative affirmed the prior decision, finding that Dr. Obianwu's opinion represented the weight of the medical evidence.

Appellant submitted reports dated January 20, 2017 from Dr. Ritu Zacharias, a Board-certified physiatrist, who diagnosed left rotator cuff tear arthropathy, cervical facet joint syndrome, myofascial pain, and cervical strain.

On May 30, 2017 counsel requested reconsideration of the August 25, 2016 decision and resubmitted the January 20, 2017 reports from Dr. Zacharias in support of appellant's claim.

By decision dated September 12, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim, finding that she failed to advance a relevant legal argument or submit any relevant and pertinent new evidence. Rather, the evidence submitted was substantially similar to evidence previously considered.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The record provided to the Board includes evidence received after OWCP issued its September 12, 2017 decision. The Board's review of a case is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>5</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>6</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>7</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>8</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>9</sup>

## ANALYSIS

Appellant's May 30, 2017 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, 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 the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent evidence not previously considered by OWCP. She resubmitted reports dated January 20, 2017 from Dr. Zacharias which were already of record in support of her reconsideration request. In this report, Dr. Zacharias diagnosed left rotator cuff tear arthropathy, cervical facet joint syndrome, myofascial pain, and cervical strain. He did not provide any new medical rationale related to appellant's employment-related conditions. The Board finds that submission of this evidence did not require reopening appellant's case for merit review because it failed to address the point at issue before OWCP. OWCP terminated appellant's compensation benefits based on the lack of supportive medical evidence establishing continuing residuals from her accepted conditions. Therefore, the Board finds that these reports do not constitute new and relevant evidence. Accordingly, this evidence is not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.

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<sup>5</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> *Id.* at § 10.607(a). 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.

<sup>8</sup> 20 C.F.R. § 10.606(b)(3).

<sup>9</sup> *Id.* at § 10.608(a), (b).

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her request for reconsideration.

**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 September 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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