

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

_____)	
F.D., claiming as widow of S.D., Appellant)	
)	
and)	Docket No. 18-1528
)	Issued: April 10, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Spring Valley, CA, Employer)	
_____)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2018 appellant filed a timely appeal from a June 8, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a Board decision dated August 19, 2016, which became final after 30 days and is not subject to further review.¹ As there was no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

¹ 20 C.F.R. § 501.6(d); *see P.S.*, Docket No. 18-0718 (issued October 26, 2018); *T.B.*, Docket No. 15-0001 (issued July 1, 2015); *C.M.*, Docket No. 15-0471 (issued April 27, 2015); *D.A.*, Docket No. 08-1217 (issued October 6, 2008).

² 5 U.S.C. § 8101 *et seq.*

³ Together with her appeal request, appellant submitted a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). By order dated December 6, 2018, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1528 (issued December 6, 2018).

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

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the prior decisions of the Board are incorporated herein by reference. The relevant facts are as follows.

On July 12, 1997 the employee, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to factors of his federal employment. OWCP accepted the claim on August 13, 2001 for adjustment disorder with mixed anxiety and depressed mood and paid the employee wage-loss compensation and medical benefits from July 12 until October 23, 1997, the date the conditions were found to have resolved.

The employee died on April 12, 2001 and appellant, the employee's widow, filed a claim for survivor benefits (Form CA-5) on September 3, 2003 alleging that the employee's death was causally related to his accepted employment injury.

By decision dated August 26, 2013, the Board set aside an August 23, 2012 OWCP decision which had found that the employee's death had not been established as causally related to his employment injury. The Board found that the reports by Dr. Shamoan Ahmad, a Board-certified internist with a subspecialty in oncology, who served as an impartial medical specialist, were insufficient to resolve the conflict in the medical opinion evidence as to whether the employee's death was causally related to his accepted employment injury. The Board instructed OWCP to refer the employee's case record to another impartial medical specialist to resolve the remaining conflict in the medical opinion evidence.

In the most recent Board decision in this case, dated August 19, 2016, the Board affirmed a May 11, 2015 OWCP decision which denied appellant's claim for survivor benefits.⁵ The Board found that the reports of the impartial medical specialist, Dr. Vandana Agarwal, a Board-certified internist with subspecialty certifications in medical oncology and hematology, sufficient to resolve the conflict in the medical opinion evidence on the issue of whether the employee's death due to colon cancer was causally related to his accepted employment injury.

On August 9, 2017 OWCP received appellant's request for reconsideration. In support of her request, appellant submitted medical literature addressing the impact of stress on the spread of cancer. She asserted that contrary to Dr. Agarwal's opinion, medical studies and literature support a link between cancer and stress.

⁴ Docket No. 13-0235 (issued August 26, 2013); Docket No. 10-1719 (issued February 22, 2011); Docket No. 08-2109 (September 24, 2009); Docket No. 06-1937 (issued March 9, 2007); Docket No. 99-1439 (issued January 24, 2000).

⁵ Docket No. 16-1049 (issued August 19, 2016).

By decision dated June 8, 2018, OWCP denied reconsideration pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ 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.⁸

OWCP's regulations provide that the evidence or argument submitted by a claimant in support of a timely request for reconsideration must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

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).

On reconsideration, appellant argued that contrary to the opinion of the impartial medical specialist, Dr. Agarwal, recent medical literature supported a connection between stress and the progression of cancer.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to further 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).

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered by OWCP. In support of her request for reconsideration, appellant submitted medical literature addressing the impact of stress on the progression of cancer. The

⁶ This section provides in pertinent part: the 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).

⁷ 20 C.F.R. § 10.607.

⁸ *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). Chapter 2.1602.4b.

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(b); *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *see K.H.*, 59 ECAB 495, 499 (2008).

Board has held that medical literature from publications are of no evidentiary value in establishing causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹¹ A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence. Appellant did not do so in this case.

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2019
Washington, DC

Christopher J. Godfrey, 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

¹¹ A.S., Docket No. 18-0376 (issued July 18, 2018); *William C. Bush*, 40 ECAB 1064, 1075 (1989).