

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

| | | |
|-----------------------------------|---|------------------------------|
| M.S., Appellant |) | |
| |) | |
| and |) | Docket No. 20-0104 |
| |) | Issued: April 8, 2021 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| San Francisco, CA, Employer |) | |
| |) | |

Appearances:
Eddie Reyna, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On October 8, 2019 appellant, through her representative, filed a timely appeal from an April 11, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 5, 2018, to 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 over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

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 March 6, 2017 appellant, then a 54-year-old sales, service, and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2017 she sprained her right wrist while in the performance of duty. The employing establishment indicated on the reverse side of the claim form that she was in the performance of duty at the time of the incident.

In a state workers' compensation form report dated March 24, 2017, based on a March 3, 2017 evaluation, Dr. Hadassah Rose Kreiman, a Board-certified physiatrist, recounted a history of appellant turning to her left holding a box, which hit equipment on March 2, 2017, causing her wrist to move right and resulting in pain. Appellant indicated that she noticed that her hand and wrist became swollen about five hours later. Dr. Kreiman noted that she had been released to her usual employment following a carpal tunnel release two weeks earlier. She advised that appellant had initially experienced right wrist pain on March 2, 2017 while on a weight machine at the gym. Appellant then remembered her injury at work. Dr. Kreiman diagnosed a right wrist sprain and a left wrist flexor tendon injury. She indicated that the findings and diagnosis was consistent with appellant's account of injury. Dr. Kreiman opined that she could perform modified work duties.³

In a March 14, 2017 form report, Dr. Kreiman found improving right wrist pain and diagnosed a right wrist sprain. She advised that appellant could perform modified work duties.⁴ On May 16, 2017 Dr. Kreiman noted that she had met her physical therapy goals and released her to full-duty employment.

In a development letter dated June 21, 2017, OWCP advised appellant that, when her claim was received, it had appeared to be a minor injury that had resulted in minimal or no lost time from work. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised appellant that it was formally adjudicating her claim as she had submitted a claim for wage loss. It requested that she submit further factual and medical information in support of her claim, including a detailed report from her attending physician explaining how the identified employment incident caused or aggravated a diagnosed condition. OWCP afforded appellant 30 days to provide the requested information.

In a statement dated July 5, 2017, appellant advised that on the date of injury she had experienced right wrist pain when a package she was holding hit the edge of a filing cabinet. After her injury she felt immediate pain and swelling.

³ Dr. Kreiman provided progress reports dated April 4 and May 16, 2017.

⁴ Dr. Kreiman provided a similar report on April 4, 2017.

By decision dated July 27, 2017, OWCP denied appellant's traumatic injury claim. It found that she had not submitted sufficient medical evidence to establish a causal relationship between the diagnosed condition and the accepted March 2, 2017 employment incident.

On August 21, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on November 21, 2017. Appellant described the occurrence of the March 2, 2017 employment injury. She noted that, after work that night, she had gone to the gym. Appellant felt pain when she tried to use a machine and saw that her hand was swollen and she could not move it sideways. She initially believed that it was due to her carpal tunnel syndrome, but at an appointment the following day her physician had told her it was a new injury.

By decision dated February 5, 2018, OWCP's hearing representative affirmed the July 27, 2017 decision.

In a March 28, 2018 state workers' compensation form report, Dr. Kreiman noted that appellant's workers' compensation claim had been denied and that she wanted her to "readdress causation." She related that appellant explained that she initially experienced pain after her injury at work, continued to work, and then had pain at the gym later that night. Dr. Kreiman summarized the history she had obtained on March 2, 2017 and related, "At this time, one year later, I cannot revise my previous impression," noting that appellant had continued performing her usual employment following the incident.

On February 5, 2019 appellant, through her representative, requested reconsideration. He asserted that Dr. Kreiman, on March 3, 2017, had diagnosed a right wrist sprain and indicated that the mechanism of injury was consistent with examination findings. The representative noted that on March 14, 2017 Dr. Kreiman had specified that the reason for the evaluation was a workers' compensation injury. He resubmitted reports from Dr. Kreiman dated March 14, 21, and 24 and May 16, 2017. The representative also submitted a progress note from Dr. Kreiman dated March 14, 2017 noting that the reason for the encounter was a workers' compensation visit and diagnosing a right wrist sprain.

By decision dated April 11, 2019, OWCP denied appellant's request for reconsideration.⁵

⁵ By decision dated February 13, 2019, OWCP denied appellant's request for reconsideration, finding that it was untimely and failed to demonstrate clear evidence of error. By decision dated April 11, 2019, it vacated its February 13, 2019 decision after finding that her request for reconsideration was timely filed.

LEGAL PRECEDENT

Section 8128(a) of FECA⁶ 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.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹

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).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Appellant's representative argued that on March 3, 2017 Dr. Kreiman diagnosed a right wrist sprain and found that the mechanism of injury was consistent with examination findings. He additionally argued that on March 14, 2017 Dr. Kreiman had specified that she was evaluating appellant for a workers' compensation injury. These arguments, however, are not relevant to the underlying issue of whether appellant has established a medical

⁶ *Supra* note 2.

⁷ 5 U.S.C. § 8128(a); *see 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).

⁸ 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).

⁹ *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 (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.

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

condition causally related to the accepted March 2, 2017 employment incident.¹² The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³ Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁴

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant resubmitted reports dated March 14, 21, and 24, and May 16, 2017. However, providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis to reopen a claim.¹⁵ Appellant also submitted a page from Dr. Kreiman's March 14, 2017 evaluation, noting that the reason for the encounter was a workers' compensation visit and a March 28, 2018 report from Dr. Kreiman declining to revise her causation opinion from the previous year. The underlying issue in this case, however, is whether appellant has submitted rationalized evidence establishing a diagnosed condition causally related to the accepted March 2, 2017 employment incident. Dr. Kreiman's March 14, 2017 report does not provide a reasoned opinion on causation and, thus, lacks probative value and the March 28, 2018 report fails to support causal relationship. As noted, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶ Appellant has not provided relevant and pertinent new evidence and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).¹⁷

On appeal appellant contends that she submitted sufficient evidence to establish causal relationship. However, as explained above, the Board lacks jurisdiction to review the merits of the claim.

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.¹⁸

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).

¹² See *M.P.*, Docket No. 20-0814 (issued January 26, 2021).

¹³ See *C.C.*, Docket No. 20-0950 (issued October 29, 2020).

¹⁴ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁵ *G.J.*, Docket No. 19-1652 (issued January 29, 2021); *S.F.*, Docket No. 18-0516 (issued February 21, 2020).

¹⁶ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019).

¹⁷ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁸ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board