

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

C.M., Appellant)	
)	
and)	Docket No. 21-0730
)	Issued: December 13, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Topeka, KS, Employer)	
)	

Appearances:

Brett E. Blumstein, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 16, 2021 appellant, through counsel, filed a timely appeal from a November 24, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated September 5, 2019 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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 6, 2017 appellant, then a 58-year-old retired sales/service distribution clerk,⁴ filed an occupational disease claim (Form CA-2) alleging that she developed shoulder, knee, and foot conditions due to factors of her federal employment.

In a development letter dated July 7, 2017, 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. Appellant was afforded 30 days to submit the necessary evidence.⁵

By decision dated December 6, 2017, OWCP denied appellant's occupational disease claim. It found that there was no rationalized medical evidence sufficient to establish that the diagnosed medical conditions were causally related to the accepted employment factors.

On January 5, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review, and submitted additional evidence.

By decision dated May 17, 2018, the hearing representative affirmed the December 5, 2017 decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted factors of appellant's federal employment.

On August 3, 2018 appellant filed a timely appeal with the Board. By decision dated May 8, 2019, the Board set aside OWCP's May 17, 2018 decision and remanded the case for further development.⁶ The Board specifically found that Dr. John W. Ellis, a Board-certified family practitioner, had provided, in reports dated February 9 and August 24, 2017, an affirmative opinion on causal relationship which, while insufficiently rationalized to meet appellant's burden

³ Docket No. 18-1516 (issued May 8, 2019).

⁴ Appellant retired from the employing establishment on February 27, 2015.

⁵ On September 5, 2017 appellant filed another Form CA-2 alleging a back condition due to factors of her federal employment. On both claim forms, she noted that she first became aware of her claimed condition(s) on February 27, 2015.

⁶ See *supra* note 3.

of proof, was sufficient, in the absence of opposing medical evidence, to require further development of the case record.

On July 18, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Sivakoti R. Katta, a Board-certified physical medicine and rehabilitation specialist, for a second opinion evaluation on whether the diagnosed conditions involving appellant's back, feet, shoulders and knees were caused or aggravated by her federal work activities.

In an August 6, 2019 report, Dr. Katta reviewed the SOAF and the medical record, including x-rays of the shoulder, lumbar spine and knee joints taken in 2018. He set forth examination findings and provided an assessment of chronic bilateral bicipital tendinitis in both shoulders without any obvious rotator cuff lesion, chronic left cervical paraspinal and posterior shoulder girdle muscle strain without any clinical evidence of cervical radiculopathy, no residual deficits from previous bilateral carpal tunnel syndrome or ulnar lesion, chronic low back pain from degenerative disc and degenerative joint disease of the lumbar vertebrae without any lumbar radiculopathy, bilateral trochanteric bursitis, degenerative joint disease in both knees and ankles and probable chronic right ankle sprain, and obesity. Dr. Katta indicated that appellant's subjective symptoms involving her back, shoulders, feet, and knees correlated with her objective findings. He noted that she was never treated for a work-related injury to her low back, hips, shoulders, and right ankle and opined that he was not sure that any of her present conditions were the direct result of her work activities. Dr. Katta indicated that appellant's left hamstring muscle strain "might have" aggravated her left knee joint pain and that she "might have problems with shoulder tendinitis while dealing with her carpal tunnel syndrome."

By decision dated September 5, 2019, OWCP denied appellant's claim, finding that the medical evidence did not establish causal relationship. The weight of the medical evidence was accorded to Dr. Katta's August 6, 2019 opinion.

On September 1, 2020 appellant, through counsel, requested reconsideration. Counsel specifically noted Dr. Katta's statement that he was not sure whether any of her present conditions were from work-related injuries. He argued that Dr. Katta's opinion was speculative or equivocal on the issue of causal relationship and therefore lacked probative value. Counsel also contended that the weight of the medical evidence should be given to Dr. Ellis' well-reasoned medical reports or a conflict in medical evidence should be declared.

By decision dated November 24, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

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 or her 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

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹² and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

On August 31, 2020 appellant, through counsel, timely requested reconsideration. Counsel argued that OWCP improperly found that Dr. Katta's report constituted the weight of the medical

⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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 M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ 20 C.F.R. § 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 (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.

¹⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹³ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

evidence as his opinion was speculative in nature. He specifically noted that Dr. Katta concluded that he was not sure that any of appellant's present conditions were the direct result of her work activities. Dr. Katta had therefore not provided an unequivocal opinion that her conditions were or were not employment related. Counsel also contended that weight of the medical evidence should be given to Dr. Ellis' well-reasoned medical reports or a conflict in medical evidence should be declared. As these arguments relate to the underlying issue of causal relationship, the Board finds that counsel has advanced new and relevant legal arguments not previously considered by OWCP.¹⁴

As appellant has advanced a new and relevant legal argument not previously considered by OWCP, she is entitled to a review of the merits of the claim under section 10.606(b)(3) of OWCP's regulations.¹⁵ Following any further development as deemed necessary, OWCP shall issue an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

¹⁴ V.R., Docket No. 19-1761 (issued April 15, 2020).

¹⁵ See *T.P.*, Docket No. 18-0608 (issued August 2, 2018); see also *L.K.*, Docket No. 15-0659 (issued September 15, 2016); see also *T.L.*, Docket No. 16-0536 (issued July 6, 2016).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2020 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 13, 2021
Washington, DC

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

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

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