

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

F.M., Appellant)	
)	
and)	Docket No. 20-1650
)	Issued: December 8, 2022
U.S. POSTAL SERVICE, IDA JEAN HAXTON)	
POST OFFICE, Huntington Beach, CA,)	
Employer)	
)	

Appearances:
Roxann M. Gonzalez, 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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On September 21, 2020 appellant, through his representative, filed a timely appeal from an April 7, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated August 23, 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 to review 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 his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 25, 2018 appellant, then a 56-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hip degenerative joint disease (DJD), right hip bursitis, right hip aseptic necrosis of the femoral head, and multiple right hip tendon tears due to factors of his federal employment including walking, carrying a mail satchel, and mounting and dismounting from his work vehicle. He noted that he first became aware of his claimed conditions and their relation to his federal employment on August 23, 2018. OWCP assigned the claim OWCP File No. xxxxxx601.³

In a September 24, 2018 statement, appellant indicated that he had a previously accepted traumatic claim for his right hip, but due to persistent and progressive pain, which directly related to the performance of his duties, he decided to seek further medical attention. He asserted that repetitive duties at work caused a sharp, stiff pain in his right hip.

By decision dated December 28, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 15, 2019 appellant requested reconsideration and submitted medical evidence. In a September 20, 2018 narrative report, Dr. Hosea Brown, an internal medicine specialist, referenced appellant's previously-accepted right hip injury under OWCP File No. xxxxxx321 and opined that he had sustained permanent aggravation and acceleration of his right hip DJD, right hip bursitis, multiple right hip tendon tears, and right hip aseptic necrosis of the femoral head due to factors of his employment.

By decision dated June 14, 2019, OWCP modified the December 28, 2018 decision to find that the medical evidence of record was sufficient to establish a diagnosed condition in connection with the accepted employment factors. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

On July 15, 2019 appellant requested reconsideration and submitted additional medical evidence. In an October 29, 2015 narrative report, Dr. Brown recounted appellant's September 8, 2015 injury under OWCP File No. xxxxxx321. In a June 27, 2019 letter, he opined that appellant's

³ The record reflects that appellant has a previously accepted claim for a September 8, 2015 lumbar sprain, temporary aggravation of right hip DJD, and right hip sprain under OWCP File No. xxxxxx321. On September 4, 2020 appellant filed a separate traumatic injury claim for an August 29, 2019 employment incident that resulted in a right knee and right hip injury. OWCP assigned that claim OWCP File No. xxxxxx184 and accepted it for right lower leg abrasion, right knee sprain, right hip DJD, and right hip bursitis. Appellant's claims have not been administratively combined.

previously-accepted injury under OWCP File No. xxxxxx321 was irrelevant because the current conditions were a result of repetitive and continuous trauma, even if his right hip DJD was temporarily aggravated due to the acute traumatic injury.

By decision dated August 23, 2019, OWCP denied modification of its June 14, 2019 decision.

OWCP subsequently received progress notes dated October 3, 2019 and January 9 and March 5, 2020, wherein Dr. Brown noted appellant's subjective complaints and his examination findings. Dr. Brown repeated his diagnoses of right hip DJD (permanent aggravation and acceleration), right hip bursitis, multiple right hip tendon tears, and right hip aseptic necrosis, femoral head. He opined that appellant could continue working with updated restrictions.

By appeal request form, received on March 25, 2020, appellant requested reconsideration.

In support of his request, appellant submitted a March 5, 2020 narrative report, wherein Dr. Brown noted his disagreement with the August 23, 2019 merit decision.

By decision dated April 7, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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 own motion or on application.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *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 (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). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On reconsideration appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁹

In support of his request for reconsideration, appellant submitted progress notes dated October 3, 2019 and January 9 and March 5, 2020, wherein Dr. Brown noted appellant's subjective complaints and his examination findings. He repeated his diagnoses of right hip DJD (permanent aggravation and acceleration), right hip bursitis, multiple right hip tendon tears, and right hip aseptic necrosis, femoral head. He opined that appellant could continue working with updated restrictions. Appellant submitted a March 5, 2020 narrative report, wherein Dr. Brown noted his disagreement with the August 23, 2019 merit decision and requested that the previously-submitted medical evidence be "properly evaluated by a physician as opposed to an evaluation by nonmedical personnel who are not qualified to evaluate the medical evidence pertinent to this case." However, while this medical evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether appellant has established causal relationship between his diagnosed medical conditions and the accepted employment factors. The Board has held that the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a claim.¹⁰ As the evidence submitted on reconsideration is not relevant and pertinent new medical evidence not previously considered by OWCP, appellant is not entitled to a review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

⁸ *Id.* at § 10.608(b).

⁹ *Supra* note 5 at § 10.606(b)(3)(i) and (ii); *see A.N.*, Docket No. 22-0617 (issued August 26, 2022); *M.L.*, Docket No. 22-0120 (issued May 12, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁰ *T.D.*, Docket No. 21-1381 (issued June 21, 2022); *T.M.*, Docket No. 19-0535 (issued July 25, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹¹ 20 C.F.R. § 10.606(b)(3)(iii).

The Board, therefore, finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹² *D.C.*, Docket No. 22-0098 (issued August 26, 2022); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).