

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

V.T., Appellant)	
)	
and)	Docket No. 23-0336
)	Issued: August 21, 2023
U.S. POSTAL SERVICE, LAKEVIEW POST)	
OFFICE, Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 6, 2023 appellant filed a timely appeal from a July 11, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 21, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On February 23, 2016 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that her left hip osteoarthritis was aggravated by factors of her federal employment, including walking, climbing stairs, bending, stooping, and twisting for the past 22 years. OWCP initially denied her claim, but on October 24, 2018 it accepted the claim for permanent aggravation of left hip arthritis.

On March 28, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work for the period July 9, 2016 through December 28, 2018.

By decision dated October 21, 2020, OWCP authorized payment of wage-loss compensation for disability for the period April 18, 2017 through December 28, 2018, finding that the medical evidence of record supported a finding that appellant's April 18, 2017 left hip total arthroplasty was medically necessary for her accepted condition of permanent aggravation of left hip arthritis. However, it denied her request for compensation for the remaining claimed period July 9, 2016 through April 17, 2017 because the medical evidence of record was insufficient to establish disability during the period claimed due to her accepted employment injury.

OWCP subsequently received a copy of a previously-submitted progress note dated August 13, 2020, wherein Dr. Dore E. Robinson, a family practitioner and orthopedic surgeon, assessed other bursitis of the left hip, presence of left artificial hip joint, and left knee monoarthritis, not otherwise specified.

On October 21, 2021 appellant requested reconsideration of the October 21, 2020 decision. In an accompanying letter dated October 20, 2021, she explained that her treating physician, Dr. Mara Terras, a Board-certified internist, placed her off work from July 9, 2016 through April 17, 2017 pending her total hip replacement to treat her accepted condition of left hip osteoarthritis. Appellant explained that during this period she experienced severe pain, difficulty walking, and difficulty with numerous activities of daily living. However, she noted that she could not schedule her left hip total replacement because OWCP had initially denied her occupational disease claim.

By decision dated November 3, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that her request for reconsideration neither raised substantive legal questions, nor provided new and relevant evidence.

On February 10, 2022 appellant appealed OWCP's November 3, 2021 decision to the Board. By order dated June 3, 2022, the Board set aside OWCP's November 3, 2021 decision

² *Order Remanding Case*, Docket No. 22-0475 (issued June 3, 2022).

and remanded the case to OWCP to make findings of fact, with a clear statement of reasons, explaining the basis for the decision that her argument submitted on reconsideration was insufficient to meet any of the requirements of 20 C.F.R. § 10.606(b)(3), warranting further merit review of her claim.

By decision dated July 11, 2022, OWCP again denied appellant's request for reconsideration of the merits of her 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 or her own motion or on application.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁹ When reviewing an

³ 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).

⁴ 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).

⁵ *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.

⁶ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *F.E.*, Docket No. 20-0070 (issued August 4, 2020); *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

⁹ *F.E., id.*; *Mark H. Dever*, 53 ECAB 710 (2002).

OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's request for reconsideration and any evidence submitted in support thereof.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).

In a statement accompanying her October 21, 2021 request for reconsideration, appellant contended that being placed off work during the period, July 9, 2016 through April 17, 2017, by Dr. Terras, pending her total left hip replacement, established that she was disabled from work during that claimed period due to the accepted employment injury. However, her own opinion on the cause of disability is not relevant to the underlying issue in this case, *i.e.*, whether she was disabled for the period July 9, 2016 through April 17, 2017 due to her accepted employment injury. This is a medical issue which must be addressed by relevant medical evidence.¹¹ 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 case.¹² Consequently, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant resubmitted Dr. Robinson's August 13, 2020 progress note. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value, and does not constitute a basis for reopening a case.¹³ OWCP also received additional evidence regarding schedule award and overpayment issues. As previously noted, 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 case.¹⁴ As appellant did not provide relevant and pertinent new evidence regarding the underlying issue of disability during the period July 9, 2016 through April 17, 2017, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that appellant has not met 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.

¹⁰ *F.E., id.*; *Annette Louise*, 54 ECAB 783 (2003).

¹¹ *See L.F.*, Docket No. 22-0576 (issued September 13, 2022); *L.W.*, Docket No. 22-0141 (issued May 16, 2022); *A.P.*, Docket No. 20-0089 (issued June 17, 2020); *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹² *L.F., id.*; *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper, id.*

¹³ *See W.W.*, Docket No. 21-0740 (issued January 18, 2023); *D.H.*, Docket No. 22-0875 (issued December 5, 2022); *B.P.*, Docket No. 22-0680 (issued October 18, 2022); *L.F., id.*; *Eugene F. Butler*, 36 ECAB 393 (1984).

¹⁴ *Supra* note 12.

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 July 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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