

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

A.M., claiming as widow of C.M., Appellant)	
)	
and)	Docket No. 24-0737
)	Issued: August 22, 2024
U.S. RAILROAD RETIREMENT BOARD,)	
Chicago, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 18, 2024 appellant filed a timely appeal from a December 22, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision dated December 15, 2022 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 Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's December 22, 2023 decision was June 19, 2024. Because using June 21, 2024, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is June 18, 2024, rendering the appeal timely filed.

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

The employee, a contact representative, alleged an emotional condition due to factors of her federal employment on or about June 8, 1984, including increased workload due to staff layoffs; harassment by a former employee who would repeatedly come to watch her work despite being permanently removed from the building and told to cease contact with her; being left alone to work in an isolated area of the building where a rape had previously occurred; and difficulties with management officials who were more than 100 miles away from her, which caused delayed responses in getting assistance, allowances, and permission to use leave. She stopped work on May 1, 1987. OWCP accepted the employee's claim for adjustment disorder with anxiety and dysthymic disorder and paid her wage-loss compensation for total disability on the periodic rolls.

The employee passed away on June 10, 2016. A death certificate dated June 14, 2016 listed the causes of death as urinary tract infection (UTI), sepsis, and dementia.

On June 10, 2019 appellant filed a claim for compensation by a surviving spouse (Form CA-5), noting that the employee had passed away due to "emotional reasons for 29 years that led to suicide attempt and dementia death." The "attending physician's report" portion of the claim form was not completed.

In a development letter dated July 23, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, including a comprehensive medical report from a physician which provided medical rationale explaining the direct cause of death and contribution of any job-related factors and/or nonwork-related factors. OWCP afforded appellant 30 days to respond.

By decision dated June 29, 2020, OWCP denied appellant's claim for survivor benefits, finding that he had not submitted rationalized medical evidence relating the employee's death to an employment-related cause.

On June 22, 2021 appellant requested reconsideration of OWCP's June 29, 2020 decision. In support of his request, he submitted several statements; an August 20, 1991 statement of accepted facts (SOAF); and a January 26, 1993 letter to the employee from an OWCP claims examiner regarding authorization of payment of compensation and medical treatment. Appellant also submitted various medical reports for treatment the employee received prior to her death dated February 25, 1987 through June 14, 2015 with highlights and annotations by appellant.

By decision dated October 1, 2021, OWCP denied modification of its June 29, 2020 decision.

On September 28, 2022 appellant requested reconsideration of OWCP's October 1, 2021 decision. In support of the request, he submitted a November 20, 1991 letter scheduling the employee for a second opinion evaluation and medical reports for treatment the employee received

prior to her death dated September 23, 1991 through January 5, 2016 with highlights and annotations by appellant.

By decision dated December 15, 2022, OWCP denied modification of its October 1, 2021 decision.

On December 13, 2023 appellant requested reconsideration of OWCP's December 15, 2022 decision. In support of the request, he submitted a medical journal article regarding chronic pain programs; letters from OWCP to the employee and her providers dated June 29, 1991 through July 9, 2012 with highlights and annotations by appellant; and medical reports for treatment the employee received prior to her death dated May 18, 1992 through November 18, 2014 with highlights and annotations by appellant.

By decision dated December 22, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ 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.⁵

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.⁶ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ *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). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

⁷ *Id.* at § 10.608.

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. 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).⁸

In support of his request for reconsideration, appellant did not submit any new and relevant medical evidence. He submitted a medical journal article regarding chronic pain programs; letters from OWCP to the employee and her providers dated June 29, 1991 through July 9, 2012 with highlights and annotations by appellant; and medical reports for treatment the employee received prior to her death dated May 18, 1992 through November 18, 2014 with highlights and annotations by appellant. However, the underlying issue on reconsideration is whether he has met his burden of proof to establish that the employee's death was causally related to her accepted employment injury. This is a medical issue which can only be addressed by submission of rationalized medical evidence based upon a complete and accurate factual and medical background, establishing causal relationship between the employee's death and an employment injury or factors of her federal employment, not previously considered.⁹ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

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.

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).

⁸ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁹ *See D.H.*, Docket No. 22-0875 (issued December 5, 2022); *D.J.*, Docket No. 21-0371 (issued November 24, 2021).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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