

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

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G.A., Appellant)	
)	
and)	Docket No. 24-0607
)	Issued: July 5, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
San Francisco, CA, Employer)	
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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 May 16, 2024 appellant filed a timely appeal from a November 22, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated October 27, 2023, 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 to review 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).

FACTUAL HISTORY

On July 10, 2023 appellant, then a 60-year-old lead sales and service associate, filed an occupational disease claim (Form CA-2) alleging that she developed a spinal condition due to

¹ 5 U.S.C. § 8101 *et seq.*

factors of her federal employment. She noted that over the 35 years at the employing establishment she was required to engage in heavy lifting, physical exertion, and repetitive motions which caused progressive degeneration. Appellant indicated that she first became aware of her condition on June 26, 2023 and realized its relation to her federal employment on July 10, 2023. She stopped work on June 26, 2023 and returned on June 27, 2023.

On July 24, 2023 appellant was treated by Dr. Michael B. Potter, a Board-certified family medicine physician, who indicated that appellant had a cervical spine condition causing radicular arm pain bilaterally and opined that this condition “may” have been caused or exacerbated by her employment. Dr. Potter further indicated that she seemed to have Achilles tendinitis of the right heel that “may” be exacerbated by her job. He also noted that appellant had a recent back injury at work, but the pain had resolved.

Appellant submitted a narrative statement and multiple position description forms by the employing establishment covering her various positions. Duties included handling or sorting of heavy containers of mail and parcels up to 70 pounds, as well as prolonged standing, walking, bending, and reaching.

On August 1, 2023 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on June 26, 2023 and returned to work on June 27, 2023 at full duty.

In a development letter dated August 8, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

On August 10, 2023 appellant responded to OWCP’s development questionnaire, estimating that she performed the required employment duties 20 to 40 times a day. She noted that activities outside of her employment included computer usage, arts and crafts, and housework.

In a letter dated August 21, 2023, the employing establishment controverted appellant’s claim. It noted that she was on leave for two weeks and reported an injury after she returned to work. The employing establishment indicated that appellant’s job duties included bending, pulling, pushing, and stooping for two hours out of an eight-hour workday.

In a narrative statement dated August 29, 2023, appellant contended that the letter from the employing establishment controverting her claim was not from a knowledgeable supervisor. She asserted that she never discussed her injury with the responding manager and that she felt harassed by the manager. Appellant also indicated that she was on medical leave to take care of her son.

In a report dated September 6, 2023, Dr. Potter opined that it is “quite plausible” that appellant’s work is related to her pain.

A magnetic resonance imaging (MRI) report of the cervical spine and brain dated July 7, 2023 from Dr. Christine M. Glastonbury, a neuroradiology specialist, demonstrated mild bilateral proptosis and cervical spine degenerative changes, particularly at C5-6 and C6-7. An x-ray report

dated August 22, 2023 from Dr. Ryan Anthony Fisicaro, a neuroradiology specialist, of the spine and leg revealed mild anterolisthesis at C4-5 and C5-6, lower cervical predominant disc height loss and endplate degenerative changes, facet arthrosis throughout cervical spine and lower lumbar spine, anterior compression deformity of the T11 vertebral body, mild anterior wedge deformity of the T12 vertebral body, multilevel endplate degenerative changes throughout thoracic spine, mid to lower thoracic left lateral endplate osteophyte formation, mild levoconvex curvature of the lumbar spine, and mild multilevel endplate degenerative changes of the lumbar spine.

In a follow-up letter dated September 12, 2023, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 8, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidenced contained in the record.

An MRI scan report of the lumbar spine dated September 22, 2023 demonstrated subacute compression fracture deformity of the T11 vertebral body with 40 percent height loss, as well as multilevel degenerative changes most pronounced at L4-5 where mild canal stenosis and mild right neural foraminal narrowing were found.

In a narrative statement dated September 26, 2023, appellant inquired as to why she was receiving a questionnaire again and noted that she submitted a diagnostic report of her lumbar spine.

Dr. Shweshha Govil, a Board-certified family medicine osteopath, indicated in a work status note dated September 27, 2023, diagnosed subacute compression fracture of the thoracic spine and provided work restrictions.

An October 5, 2023 work status note by Dr. Potter placed appellant off work from October 2 to 6, 2023.

On October 11, 2023 appellant was seen by Dr. Robert S. Gamburd, a Board-certified physiatrist, who referenced the September 22, 2023 MRI scan findings.

In a report dated October 18, 2023, Dr. Potter opined that it was clear from appellant's history and evaluations that her condition was work related. Further, he opined that her degenerative arthrosis and stenosis in her cervical spine and lumbar spine were "likely" at least 50 percent work related.

By decision dated October 27, 2023, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed lower extremity conditions were causally related to the accepted employment factors.

On November 17, 2023 appellant requested reconsideration. In support of her reconsideration request, she submitted a statement indicating that several documents that she submitted as evidence did not successfully upload online and that she would mail the missing documents.

By decision dated November 22, 2023, OWCP 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 does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ 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.⁴ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵ When a timely application 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.⁶

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 support of her reconsideration request, appellant submitted a statement asserting that several documents she submitted as evidence did not successfully upload online and that she would physically mail the missing documents. The Board finds that she did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant did not submit any evidence with her request for reconsideration. As she has not submitted relevant and pertinent new evidence, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

² This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application. 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *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 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.

⁵ *Id.* at § 10.606(b)(3).

⁶ *Id.* at § 10.608(a), (b).

The Board, accordingly, 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 further 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 November 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 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