

ISSUES

The issues are: (1) whether OWCP, in its March 24, 2017 decision, properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a); and (2) whether OWCP, in its July 5, 2017 decision, properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 16, 2015 appellant, a 35-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging a bilateral shoulder injury that day as a result of lifting a tub containing flats of mail.

In hospital reports dated June 16, 2015, Dr. Jessica Fleischer-Black, a Board-certified emergency medicine specialist, diagnosed neck strain and released appellant to work without restrictions on June 19, 2015.

On June 19, 2015 Dr. Leo Yankilevich, an internist, advised that appellant was under his care for a work-related injury and would be unable to work until July 16, 2015.

In an attending physician's report (Form CA-20) dated July 6, 2015, Dr. Yankilevich diagnosed thoracic spine post-traumatic sprain and cervical spine post-traumatic sprain and checked a box marked "yes" indicating his opinion that appellant's conditions were causally related to her federal employment.

In a July 22, 2015 letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It advised that it had reopened the claim for consideration because it had "received an indication" that appellant had not returned to work in a full-time capacity. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a July 15, 2015 report from Dr. Yankilevich who advised that she was unable to work due to her work-related injury and would be receiving treatment until August 17, 2015.

On July 17, 2015 Dr. Yankilevich diagnosed thoracic spine post-traumatic sprain syndrome, cervical spine post-traumatic sprain syndrome, cervicgia, and back contusion. He reiterated his opinion that appellant was totally disabled for work due to her work-related injury.

By decision dated August 25, 2015, OWCP denied appellant's claim because it found the evidence was insufficient to establish that the injury occurred at the time, place, and in the manner alleged.

On February 12, 2016 appellant requested reconsideration and submitted a May 11, 2016 report from Dr. Leon Reyfman, a Board-certified anesthesiologist and pain medicine specialist,

who diagnosed lower back pain. Dr. Reyfman released appellant to full-duty work without restrictions on June 7, 2016.

By decision dated June 24, 2016, OWCP modified its prior decision finding that the evidence of record was sufficient to establish the factual portion of fact of injury, but affirmed the denial of the claim as the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted June 16, 2015 work incident.

On July 28, 2016 appellant requested reconsideration.

By decision dated March 24, 2017, OWCP denied appellant's request for reconsideration without a merit review because she failed to advance a relevant legal argument or submit any relevant and pertinent new evidence.

On June 23, 2017 counsel requested reconsideration and argued that OWCP failed to properly develop the medical evidence. He also resubmitted reports dated June 19 and July 6, 2015 from Dr. Yankilevich in support of appellant's claim.

By decision dated July 5, 2017, OWCP denied appellant's request for reconsideration without a merit review because she again failed to advance a relevant legal argument or submit any relevant and pertinent new evidence. It found that she failed to present sufficient medical evidence in support of her claim, nor did she submit evidence that was relevant and pertinent new evidence as the evidence submitted was duplicative and repetitive of evidence previously reviewed.

LEGAL PRECEDENT -- ISSUES 1 & 2

Section 8128(a) of FECA does not entitle a claimant to 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 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.⁶ When a timely application for reconsideration does not meet at least one

³ 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 own motion or on application." 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 Employee's Compensation System (iFECS). *See also* Chapter 2.1602.4b.

⁶ 20 C.F.R. § 10.606(b)(3).

of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS -- ISSUE 1

Appellant's July 28, 2016 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not 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 the first and second above-noted requirements under section 10.606(b)(3).

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted no new evidence with her reconsideration request.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her July 28, 2016 request for reconsideration.

ANALYSIS -- ISSUE 2

Appellant's June 23, 2017 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Counsel argued that OWCP failed to properly develop the medical evidence of record. However, the Board finds that appellant had not presented sufficient medical evidence in support of his claim, nor did he submit evidence that was relevant and pertinent new evidence as the evidence submitted was duplicative and repetitive of evidence previously reviewed.

Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent evidence not previously considered by OWCP. She resubmitted reports dated June 19 and July 6, 2015 from Dr. Yankilevich in support of her reconsideration request. The Board finds that the submission of this evidence did not require reopening appellant's case for merit review because appellant had submitted the same evidence, which was previously reviewed by OWCP in its most recent merit decision dated June 24, 2016. As the reports repeat evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence.⁸

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her request for reconsideration.

⁷ *Id.* at § 10.608(a), (b).

⁸ *See D.K.*, 59 ECAB 141 (2007).

CONCLUSION

The Board finds that OWCP, in its March 24, 2017 decision, properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Board further finds that OWCP, in its July 5, 2017 decision, 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 5 and March 24, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 24, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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