

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

This case had previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 23, 2005 appellant, then a 48-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that, on or before March 28, 2005, she sustained neck, back, and right shoulder injuries due to factors of her federal employment including repetitive lifting and bending. She stopped work in May 2005 and did not return.

On August 14, 2006 OWCP accepted that appellant sustained a herniated C5-6 disc, lumbar strain, and right rotator cuff tear. As of September 9, 2008, it expanded its acceptance of the claim to include the additional conditions of bilateral hip and thigh strains. On November 26, 2008 OWCP further expanded its acceptance of the claim to include the additional condition of an aggravation of osteoarthritis of both hips.

By decision dated February 3, 2009, OWCP issued appellant a schedule award for 10 percent permanent impairment of each lower extremity. Appellant subsequently claimed an additional schedule award for lower extremity permanent impairment due to thoracic disc herniations. OWCP developed the claim as one for a consequential condition. By decision dated July 28, 2014, it denied appellant's claim for thoracic disc herniations at T8-9, T9-10, and T10-11. Following an oral hearing, by decision dated April 21, 2015, an OWCP hearing representative affirmed the July 28, 2014 decision. Appellant then appealed to the Board. By decision dated February 10, 2016,⁵ the Board affirmed OWCP's April 21, 2015 merit decision.

On June 21, 2016 appellant requested reconsideration and submitted additional medical evidence. By decision dated August 25, 2016, OWCP denied modification of its February 3, 2009 schedule award determination and affirmed the hearing representative's April 21, 2015 denial of a consequential thoracic spine condition. Appellant subsequently appealed to the Board. By decision issued November 28, 2017,⁶ the Board affirmed OWCP's August 25, 2016 decision, finding that the medical evidence of record failed to establish greater than 10 percent permanent impairment of each lower extremity, or that she sustained a consequential thoracic spine condition.

On November 20, 2018 appellant requested reconsideration of OWCP's August 25, 2016 decision. She submitted statements dated from January 30 to November 19, 2018 alleging that

⁴ The Board issued the following decisions pursuant to OWCP File No. xxxxx862, the claim currently on appeal: Docket No. 17-0767 (issued November 28, 2017); Docket No. 15-1879 (issued February 10, 2016); Docket No. 09-2007 (issued May 21, 2010, *petition for recon. denied*); Docket No. 09-2007 (issued September 28, 2010).

⁵ Docket No. 15-1879 (issued February 10, 2016).

⁶ Docket No. 17-0767 (issued November 28, 2017).

OWCP erred by failing to list bilateral hip osteoarthritis as an accepted condition in an October 9, 2008 letter to Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, inquiring as to whether she had sustained a bilateral hip condition other than accepted strains/sprains. Appellant also submitted correspondence to and from OWCP regarding the status of her claim,⁷ printouts from a U.S. Postal Service website, and copies of documents previously of record.

By decision dated February 20, 2019, OWCP denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a) finding that her reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

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.⁸

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.⁹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹¹ 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.¹²

⁷ In a February 2, 2018 letter, OWCP explained that the October 9, 2008 letter to Dr. Chmell did not list bilateral hip osteoarthritis as an accepted condition as it was not accepted until November 26, 2008.

⁸ 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).

⁹ 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).

¹⁰ *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 the merit 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.

¹¹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹² *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

Appellant's request for reconsideration does not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With her request for reconsideration appellant provided statements alleging that OWCP erred by failing to list accepted bilateral hip conditions in an October 9, 2008 letter, claim status correspondence, printouts from a U.S. Postal Service website, and copies of evidence previously of record. However, evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³ The internet printouts and case status correspondence are not relevant to the underlying issue of the claim as they do not constitute medical evidence.¹⁴ The Board notes that the submission of evidence that does not address the particular underlying issue involved does not constitute a basis for reopening a case.¹⁵ As appellant did not provide relevant and pertinent new evidence regarding the underlying issues of permanent impairment or causal relationship, she is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁶

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.¹⁷

On appeal appellant alleges a pattern of corruption and misfeasance by the employing establishment and OWCP. As set forth above, she did not satisfy the requirements of 20 C.F.R. § 10.606(b)(3) and, thus, further merit review was not warranted.

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).

¹³ *J.W.*, Docket No. 19-1795 (issued March 13, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

¹⁴ *C.T.*, Docket No. 19-0058 (issued June 14, 2019); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹⁵ *N.C.*, Docket No. 19-1378 (issued February 13, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁶ *J.W.*, *supra* note 13; *A.K.*, *supra* note 13; *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

¹⁷ *A.K.*, *supra* note 13; *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *see A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *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).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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