

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 October 15, 2018 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2018 she injured her back "lifting/pulling" while in the performance of duty. On the reverse side of the claim form the employing establishment controverted appellant's claim, noting that she had a previous condition and was on restrictions and had been advised to work within those restrictions. Appellant stopped work on October 15, 2018.

In an October 18, 2018 development letter, OWCP informed appellant that the current record was insufficient to support her compensation claim. It advised her of the need to submit both factual and medical evidence, and provided her an enclosed factual questionnaire to complete. OWCP afforded appellant 30 days to submit the requested factual and medical evidence. No response was received.

By decision dated November 21, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that the event occurred as alleged. It noted that the claim form merely indicated that she was injured "lifting/pulling." And while appellant had been afforded the opportunity to provide a detailed description of how her injury occurred, she did not provide any factual evidence of an injury occurring at work. Consequently, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received the October 18, 2018 factual questionnaire. However, appellant did not respond to any of the questions posed.

OWCP also received various medical records from Dr. John Wu, a family practitioner. In an October 17, 2018 duty status report (Form CA-17), Dr. Wu noted an October 9, 2018 date of injury, and a history of injury "picking up packages." He diagnosed neck and back sprains, and advised that appellant was totally disabled.

An October 29, 2018 duty status report (Form CA-17) signed by Dr. Wu indicated that appellant's injury occurred on October 9, 2018 while she was picking up packages, which caused neck, upper back, and low back pain. Clinical findings included acute sprain of the neck and back muscles. According to Dr. Wu, appellant remained disabled from work. A November 12, 2018 duty status report (Form CA-17) signed by Dr. Wu repeated the same information.

An undated attending physician's report (Form CA-20) signed by Dr. Wu indicated that appellant injured her back on October 9, 2018 when lifting packages in large garbage bags. Dr. Wu noted that there was no history or evidence of a concurrent or preexisting injury or physical impairment. His findings included pain upon movement in the lumbar spine, deltoid muscle, and mid-thoracic spine. Dr. Wu diagnosed lumbar and thoracic back strain and indicated that appellant's condition was caused or aggravated by her employment activity. He first treated

appellant on October 12, 2018 and continued to treat her on October 17 and 23, 2018. Dr. Wu indicated that appellant's period of total disability started on October 10, 2018 and extended to the current date. He provided appellant with anti-inflammatories, muscle relaxants, and a physical therapy referral.

A January 22, 2019 duty status report (Form CA-17) signed by Dr. Wu contained the same information as the previous duty status reports.

On February 21, 2019 appellant requested reconsideration.

By decision dated March 7, 2019, OWCP denied appellant's reconsideration request. It explained that appellant's claim had been denied due to the lack of factual evidence to establish the occurrence of a lifting/pulling incident on October 9, 2018. OWCP further explained that the evidence received since the initial decision was medical in nature, and appellant had yet to provide an account of any October 9, 2018 lifting/pulling incident descriptive enough to convey an understanding as to how she was injured.

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.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

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. 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. *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

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 February 21, 2019 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant 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).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. In its November 21, 2018 merit decision, OWCP denied appellant's traumatic injury claim because she failed to establish the factual component of fact of injury. Appellant claimed that she injured her back "lifting/pulling," but did not provide any further details of the alleged October 9, 2018 employment incident. OWCP subsequently received her October 23, 2018 signed statement of certification, but appellant did not otherwise respond to questions posed in the October 18, 2018 factual questionnaire. As such, this evidence is not relevant to the issue on reconsideration and, therefore, is insufficient to warrant reopening the case for further merit review. Similarly, the medical evidence provided by Dr. Wu does not establish a factual basis for the claim. Absent a detailed first-hand account from appellant regarding the specific circumstances of the alleged October 9, 2018 employment incident, Dr. Wu's medical reports will not suffice and are, therefore, irrelevant.⁸ Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.⁹ Accordingly, the Board finds that appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

As appellant did not meet 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

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).

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

⁸ *See F.B.*, Docket No. 18-1039 (issued December 6, 2018).

⁹ *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

¹⁰ *S.H.*, Docket No. 19-1115 (issued November 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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