



## 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

On September 12, 2019 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2019 he experienced whiplash, resulting in sprains to his neck, right shoulder and back when his mail truck was struck from the rear by another vehicle while in the performance of duty. He stopped work on August 23, 2019 and returned to work on August 29, 2019.

In a development letter dated September 20, 2019, OWCP informed appellant that he submitted no evidence to establish that the claimed August 23, 2019 employment incident occurred, as alleged. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion for details concerning the events and circumstances surrounding the alleged August 23, 2019 employment incident. OWCP also requested a narrative medical report from appellant's treating physician, explaining how the alleged employment incident caused, contributed to, or aggravated his diagnosed medical condition. It afforded him 30 days to provide the necessary information.

OWCP subsequently received an injured worker case query document, which noted that appellant worked in postal collection and delivery and was injured on August 23, 2019.

By decision dated October 24, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 3, 2020 appellant requested reconsideration of OWCP's October 24, 2019 decision and submitted additional evidence. In an August 23, 2019 report, Dr. Stephen A. Grant, Board-certified in emergency medicine, noted treating appellant for injuries sustained in a motor vehicle accident. He related that appellant reported sitting in a postal truck, unrestrained, when he was struck from the rear and ejected from the door of the truck and landed in a ditch. Appellant reported hitting the right side of his head and experiencing pain in the neck and he developed a small hematoma on the right upper arm. Findings on physical examination revealed bruises and abrasions on the right external ear, small contusion hematoma of the right triceps, and tenderness of the cervical spine. A computerized tomography (CT) scan of the head revealed no acute intracranial process, ethmoid sinusitis. A CT scan of the cervical spine was unremarkable. Dr. Grant diagnosed closed-head injury, motor vehicle accident, initial encounter. Appellant was provided discharge instructions for a closed-head injury.

In an August 23, 2019 emergency room note, Kaylla Barr, a registered nurse, reported that appellant related being an unrestrained driver who was ejected from a postal truck into a ditch.

Appellant indicated to her that he hit the right side of his head and he had a small abrasion to the top of the right ear and multiple abrasions on his back.<sup>3</sup>

By decision dated May 21, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA<sup>4</sup> 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 payment of compensation at any time on his own motion or on application.<sup>5</sup>

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup>

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.<sup>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

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<sup>3</sup> Also submitted was a patient care report from an emergency medical services dated August 23, 2019. Appellant reported sitting in the passenger side of his mail truck delivering his last mail item when he was struck from behind. He was not wearing a seatbelt and reported being thrown from the vehicle when the impact occurred.

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> *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 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). Chapter 2.1602.4b.

<sup>8</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Appellant submitted emergency room records, which documented the August 23, 2019 employment incident. In an August 23, 2019 medical report, wherein Dr. Grant recounted the history of appellant sitting in a postal truck, unrestrained, when he was struck from the rear and ejected from the door of the truck and landed in a ditch. He related that appellant hit the right side of his head and experienced pain in the neck and developed a small hematoma on the right upper arm. Dr. Grant made note of bruises and abrasions on the right external ear, small contusion hematoma of the right triceps, and tenderness of the cervical spine. He diagnosed closed-head injury, motor vehicle accident, initial encounter. Additionally, Kaylla Barr, a registered nurse, reported that appellant related being an unrestrained driver who was ejected from a postal truck into a ditch. She noted that he hit the right side of his head and he suffered a small abrasion to the top of the right ear and multiple abrasions on his back. The Board finds that these reports are new and relevant to the underlying issue of fact of injury because they include contemporaneous accounts of the factual basis of the alleged injury.<sup>10</sup>

Thus, the Board will set aside OWCP's May 21, 2020 decision and remand the case for merit review of appellant's claim. After such further development as is deemed necessary, OWCP shall issue an appropriate merit decision.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

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<sup>10</sup> See S.C., 19-0479 (issued August 8, 2019) (OWCP denied that the employment incident occurred as alleged because the claimant did not respond to the questionnaire. The Board found that the medical evidence appellant submitted in support of his reconsideration request before OWCP was relevant because it provided a detailed account of the factual basis of the alleged injury); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6 (September 2010) (to obtain merit review, a claimant need not submit all evidence that may be necessary to discharge his burden of proof); *Helen E. Tschantz*, 39 ECAB 1382 (1988); *V.B.*, Docket No. 12-1057 (issued October 23, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 7, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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