

FACTUAL HISTORY

On April 23, 2018 appellant, then a 30-year-old asylum officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she and her coworkers were involved in a motor vehicle collision (MVC) and sustained injuries, including bruising from her seatbelt, while in the performance of duty. She noted that she was transported to a hospital *via* ambulance. Appellant stopped work that day.

In an April 23, 2018 e-mail, the employing establishment documented that appellant and her coworkers were involved in an MVC that day.

In an April 23, 2018 Texas workers' compensation work status report, Dr. Roy Kendrick, a family medicine specialist, noted a diagnosis of an "MVC."

In a development letter dated April 30, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated May 31, 2018, OWCP accepted that the April 23, 2018 employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

An April 23, 2018 discharge instruction sheet noted that appellant was involved in an MVC and was treated by Dr. Kendrick. It further noted that she was discharged with follow-up instructions after receiving a tetanus shot.

In an April 23, 2018 medical report, Cristina Pacheco, a registered nurse, noted that appellant was involved in an MVC and had no neck or back pain. She indicated that she presented with a headache, but that she always had headaches.

An April 23, 2018 x-ray of the cervical spine was unremarkable. An x-ray of the pelvis of even date also demonstrated no acute fracture.

In an April 23, 2018 medical report, an unidentifiable healthcare provider conducted a physical examination, which revealed a small abrasion on the right clavicle.

On April 1, 2019 appellant requested reconsideration.

By decision dated June 28, 2019, OWCP denied modification of its prior decision.

On September 5, 2019 appellant requested reconsideration and resubmitted the copies of the April 23, 2018 work status report from Dr. Kendrick, as well as the discharge instruction sheet of even date. In an August 22, 2019 statement, she asserted that the medical evidence of record showed that she was evaluated in the hospital as a result of a work-related MVC. Appellant also

noted that her coworkers, who were involved in the same MVC, were approved for their workers' compensation benefits and argued that she should, therefore, be compensated.

By decision dated March 5, 2020, OWCP denied merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

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.²

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.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Appellant argued that she should be compensated because she was evaluated in the hospital as a result of a work-related MVC and her coworkers, who were involved in the same

² *Id.* at § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *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 (iFECS). *Id.* at Chapter 2.1602.4b.

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

MVC, were approved for their workers' compensation benefits. The Board finds, however, that these arguments are not relevant to the underlying issue of the present case, *i.e.*, whether appellant submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. The Board has held that the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.⁷ Therefore, the submission of these arguments do not require reopening of appellant's case on the merits. 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).⁸

Further, appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. On reconsideration she resubmitted the April 23, 2018 report from Dr. Kendrick, as well as the discharge instruction sheet of even date. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the case record, does not constitute a basis for reopening a case and, thus, this report is also insufficient to warrant a merit review.⁹ As these reports were previously considered and reviewed by OWCP in its prior decision, appellant is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board, accordingly, 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 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

CONCLUSION

The Board finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ *I.M.*, Docket No. 19-1189 (issued November 16, 2020); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ *See M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁹ *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *D.L.*, Docket No. 18-0449 (issued October 23, 2019).

¹¹ *D.M.*, *supra* note 9.; *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 March 5, 2020 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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