

Act (FECA)⁴ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁵

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

This case has previously been before the Board.⁶ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On March 4, 2004 appellant, then a 46-year-old former mail handler, filed a traumatic injury claim (Form CA-1) alleging that, while unloading trailers at work between "just before Christmas" and February 4, 2004, he experienced progressively worse pain symptoms in his neck, back, and left leg/hip.⁷ In a May 5, 2004 letter, OWCP advised him that his claim was being developed as a claim for an occupational disease because he implicated work duties over a period of time longer than one day or work shift. On December 4, 2012 it accepted the claim for lumbar sprain.

By decision dated December 4, 2012, OWCP terminated appellant's wage-loss compensation, effective December 4, 2012, finding that he no longer disability from work due to the accepted injury.⁸

On March 21 and December 4, 2013 appellant filed claims for compensation (Form CA-7) for disability from work commencing February 5, 2004.

Medical evidence relevant to the claimed periods of disability included a September 27, 2005 report from Dr. David Weiss, a Board-certified orthopedist, who noted that appellant suffered a work-related injury on June 17, 2004 when he was crawling under branches and felt a sudden popping sensation in his low back. He also noted that appellant was then currently employed as a

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *D.B.*, Docket No. 19-0648 (issued October 21, 2020).

⁶ Docket No. 18-0426 (issued July 17, 2019); Docket No. 16-1177 (issued October 27, 2016); Docket No. 15-0400 (issued May 12, 2016); *Order Dismissing Appeal*, Docket No. 13-183 (issued December 20, 2012); Docket No. 11-247 (issued September 13, 2011).

⁷ On the reverse side of the Form CA-1, appellant's immediate supervisor advised that appellant had been terminated from the employing establishment prior to his filing of the present claim.

⁸ On December 4, 2013 appellant requested reconsideration of the December 4, 2012 termination decision. By decision dated September 18, 2014, OWCP denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). Appellant filed an appeal with the Board and, by decision dated May 12, 2016, the Board affirmed the September 18, 2014 nonmerit decision. Docket No. 15-400 (issued May 12, 2016).

school bus driver. Dr. Weiss diagnosed chronic post-traumatic lumbosacral strain and sprain, L3-4 and L5-S1 herniated nucleus pulposus (HNP), aggravation of preexisting lumbar osteoarthritis, and left lumbar radiculitis.

In a January 16, 2012 report, Dr. Weiss noted that appellant was currently unemployed, and, according to appellant, he could no longer perform his job duties. He diagnosed cumulative and repetitive trauma disorder superimposed upon defined work-related injuries of February 4 and June 17, 2004, occupational low back syndrome, L3-4 and L5-S1 HNP, aggravation of preexisting, age-related lumbar osteoarthritis, and left lumbar radiculopathy.

In a development letter dated April 12, 2017, OWCP informed appellant of the deficiencies of his claim for compensation for disability from work for the period February 4, 2004 through December 4, 2012. It advised him of the type of medical evidence needed and afforded him 30 days to respond.

OWCP subsequently received additional evidence, including a March 4, 2004 employing establishment Authorization for Medical Attention (PS Form 3956) indicating that appellant could not work until cleared by employee health. The PS Form 3956 also indicated that he needed a referral to his primary care physician for further evaluation and/or possible magnetic resonance imaging scan. The healthcare provider's signature was illegible.

OWCP also received a hospital report dated February 23, 2004 with an illegible signature, which noted that appellant had a prior back injury from January 2004 and recommended a work restriction of no heavy lifting.

An August 15, 2008 report from Dr. Anthony Tarasenko, an internist, noted a diagnosis of lumbar strain. Dr. Tarasenko advised that appellant could return to regular-duty work on August 15, 2008.

On February 14, 2009 appellant was treated in a hospital emergency department by Dr. Chantal Simpson-Gabriel, an emergency medicine specialist, for complaints of low back pain that began three days prior after standing from a seated position. Dr. Simpson-Gabriel diagnosed low back pain, prescribed a muscle relaxant and pain medication, and advised appellant to avoid heavy lifting.

By decision dated July 6, 2017, OWCP denied appellant's claim for compensation for disability from work for the period February 4, 2004 through December 4, 2012. It found that he had not submitted a rationalized medical opinion explaining that his three-month tenure with the employing establishment caused or aggravated his diagnosed medical condition(s).

On July 12, 2017 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By letter dated September 19, 2017, counsel argued that OWCP failed to review appellant's claims for disability through December 2012. He submitted medical evidence previously of record and argued that the reports established appellant's disability claim.

By decision dated October 24, 2017, OWCP's hearing representative OWCP's July 6, 2017 decision to find that appellant had only claimed compensation for the periods February 5 through May 31, 2004, June 17, 2004 through February 7, 2005, October 3, 2005 through June 30, 2008, and February 11 through March 15, 2009. However, the claim remained denied, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed dates of disability and the accepted employment injury.

On December 26, 2017 appellant, through counsel, appealed the October 24, 2017 decision of OWCP to the Board. By decision dated July 17, 2019, the Board affirmed OWCP's October 24, 2017 decision.⁹

On March 16, 2020 appellant, through counsel, requested reconsideration.

Counsel submitted a questionnaire dated September 3, 2019 addressed to appellant containing queries regarding his disability from February/March through June 2004. Attached to the questionnaire were appellant's September 16, 2019 responses to counsel's queries, which described his physical limitations and disability for the period February/March through June 2004. Also attached was a statement from appellant dated October 28, 2019 describing his symptoms and private sector employment.

Counsel resubmitted the February 23, 2004 hospital report and the March 4, 2004 report of Dr. Paul Pirigyi, a Board-certified emergency medicine specialist.

By decision dated March 17, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim.

On March 31, 2020 appellant, through counsel, requested reconsideration.

OWCP received a pleading wherein counsel argued that OWCP mishandled evidence and that the March 17, 2020 decision was erroneous. It also received a brief from counsel dated March 25, 2020 arguing that appellant was entitled to compensation for temporary total disability for the period February 5 through May 31, 2004. Counsel summarized appellant's complaints following the injury and his medical treatment. He also asserted that appellant had been unable to obtain necessary medical treatment to establish his claim because he did not have any health insurance.

By decision dated April 23, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

⁹ Docket No. 18-0426 (issued July 17, 2019).

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.¹⁰

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.¹¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹³ 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.¹⁴

ANALYSIS

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

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the October 24, 2017 OWCP decision because the Board considered that evidence in its July 17, 2019 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁵

On reconsideration, counsel submitted a pleading and a brief, both dated March 25, 2020. He argued that OWCP mishandled evidence and that the March 17, 2020 decision was erroneous. Counsel further argued that appellant was entitled to compensation for temporary total disability for the period February 5 through May 31, 2004. He summarized appellant's complaints following the injury and his medical treatment. Counsel also asserted that appellant had been unable to obtain necessary medical treatment to establish his claim because he did not have any health insurance. The Board finds that the arguments made by counsel on reconsideration were cumulative and/or irrelevant and were therefore insufficient to warrant reopening the claim for

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(3).

¹² *Id.* at § 10.607(a).

¹³ *Id.* at § 10.608(a).

¹⁴ *Id.* at § 10.608(b).

¹⁵ *O.W.*, Docket No. 21-0836 (issued September 29, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

merit review.¹⁶ Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁷

Appellant did not submit any evidence in support of his request for reconsideration. The underlying issue is whether he has established disability from work for the periods February 5 through May 31, 2004, June 17, 2004 through February 7, 2005, October 3, 2005 through June 30, 2008, and February 11 through March 15, 2009. This is a medical issue which can only be addressed by submission of rationalized medical evidence.¹⁸ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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.¹⁹

CONCLUSION

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

¹⁶ See *J.J.*, Docket No. 20-0331 (issued October 27, 2020); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁷ *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁸ See *L.K.*, Docket No. 22-0793 (issued August 26, 2022); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁹ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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