



appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

### **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 January 13, 2020 appellant, then a 55-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on January 10, 2020 she injured her right shoulder when she heard a pop while reaching for and pulling down a canister while in the performance of duty. She stopped work on January 10, 2020.

In a development letter dated January 15, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In an employing establishment clinic note dated January 10, 2020, Dr. John C. Charnas, an occupational medicine specialist, obtained a history of appellant experiencing a popping sensation in her right shoulder pulling down a canister from a shelf. He noted that she had previously experienced issues with her right shoulder beginning in 2016. Dr. Charnas diagnosed right rotator cuff impingement and opined that appellant should not work.

On January 13, 2020 Dr. Charnas noted that appellant had continued right shoulder pain and diagnosed right shoulder rotator cuff impingement.

In a report dated January 22, 2020, Dr. Carl R. Freeman, a Board-certified orthopedic surgeon, evaluated appellant for right shoulder pain that began on January 10, 2020 when she reached to pick up a canister and felt a pop in her shoulder pulling the canister down. On examination he observed tenderness to palpation over the acromioclavicular (AC) joint and at the anterior, lateral, and posterior shoulder. Dr. Freeman diagnosed right shoulder pain, a possible rotator cuff tear, and possible rheumatological issues. In a state workers' compensation form of even date, he indicated that it was undetermined whether appellant's injury was employment related.

A magnetic resonance imaging (MRI) scan of the right shoulder, obtained on February 4, 2020, demonstrated a small partial-thickness tear of the anterior margin of the distal supraspinatus

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 9, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

tendon of indeterminate age, mild-to-moderate diffuse chronic tendinosis of the supraspinatus tendon, and moderate joint effusion of indeterminate age.

By decision dated February 26, 2020, OWCP denied appellant's traumatic injury claim. It found that she had not established a medical diagnosis in connection with the accepted employment incident.

In a progress report dated February 26, 2020, Dr. Freeman reviewed the MRI scan and diagnosed right shoulder adhesive capsulitis, right rotator cuff tendinitis, right shoulder pain and a probable rheumatologic disorder. He advised that appellant could work without restrictions.

On March 12, 2020 appellant requested reconsideration. In a statement dated March 27, 2020, she related that she had severe pain such that she could barely function.

By decision dated May 14, 2020, OWCP modified its February 26, 2020 decision to reflect that appellant had established a medical diagnosis. It found, however, that she had not submitted sufficient medical evidence to establish that the diagnosed condition was causally related to the accepted January 10, 2020 employment incident.

Thereafter, OWCP received an April 28, 2020 report from Dr. Andrew F. Rocca, a Board-certified orthopedic surgeon. Dr. Rocca discussed appellant's history of right shoulder pain after reaching for a canister at work. He diagnosed right shoulder pain, right shoulder adhesive capsulitis, a low-grade partial tear of the right rotator cuff with tendinosis, and a history of left shoulder surgery in 2011 with adhesive capsulitis.

On May 26, 2020 appellant again requested reconsideration.

A June 18, 2020 MRI scan of the right shoulder demonstrated supraspinatus tendinosis with a high-grade partial-thickness bursal tear with a possible small full-thickness component, mild AC joint arthropathy, subacromial/subdeltoid bursitis, and biceps tenosynovitis with degenerative tearing of the posterior and superior labrum.

On June 5, 2022 Dr. Rocca provided a history of appellant experiencing pain in her right shoulder beginning January 10, 2020 after she reached for a canister at work. He noted that she had a history of problems with her left shoulder due to an injury in 2011. Dr. Rocca diagnosed right shoulder pain, right shoulder adhesive capsulitis, a right shoulder partial rotator cuff tear with tendinosis, and a prior history of left shoulder surgery in 2011 with adhesive capsulitis. Dr. Rocca opined that appellant had a frozen shoulder and recommended manipulation under anesthesia. He provided a similar progress report on June 23, 2020.

In a July 17, 2020 progress report, Dr. Rocca noted that appellant was doing well one week status post right shoulder manipulation, lysis of adhesions, partial synovectomy, rotator cuff debridement, labral debridement, and subacromial decompression. He provided similar progress reports on August 14 and October 6, 2020.

By decision dated January 7, 2021, OWCP denied modification of its May 14, 2020 decision.

Thereafter, OWCP received an April 14, 2021 report from Dr. Dency Rivas, a physician specializing in family medicine. Dr. Rivas obtained a history of appellant injuring herself at work on January 10, 2020 reaching for a pill bottle and hearing a “pop” as she brought her arm down. He diagnosed a complete rotator cuff tear or rupture of the right shoulder, right shoulder adhesive capsulitis, cervicalgia, cervical radiculopathy, depression, anxiety, and insomnia. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Rivas provided work restrictions.

In an April 30, 2021 report, Dr. Wendell J. Bulmer, an osteopath, noted that appellant had experienced right shoulder pain for the past 15 months after she felt a pop while reaching at work. He diagnosed a right shoulder partial-thickness rotator cuff tear, acromion impingement, a superior labrum anterior and posterior (SLAP)-type labral tear, adhesive capsulitis, and a work-related injury. Dr. Bulmer indicated that appellant had “basically the same symptoms she had shortly after the injury” and recommended a repeat arthroscopy.

In progress reports dated May 18, June 21, and September 14, 2021, Dr. Rivas provided findings and diagnoses similar to those in his April 14, 2021 report. In Form OWCP-5c of even dates, he found that her work status had not changed.

On January 7, 2022 appellant, through counsel, requested reconsideration. Counsel noted that she had a prior claim for a left shoulder injury, assigned OWCP File No. xxxxxx657, and asserted that medical evidence dated July 17 and August 14, 2020 might be in that file number.

By decision dated March 9, 2022, OWCP denied appellant’s request for reconsideration of the merit of her 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.<sup>4</sup>

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.<sup>5</sup>

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<sup>4</sup> 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).

<sup>5</sup> 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).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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>8</sup>

### 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).

On reconsideration, counsel generally asserted that appellant had a prior claim for a left shoulder injury and questioned whether medical reports dated July 17 and August 14, 2020 were contained in that file number. Consequently, appellant has not raised a relevant legal argument or demonstrated that OWCP erroneously applied a point of law. Appellant, therefore, 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).<sup>9</sup>

The underlying issue is whether appellant has established a diagnosed condition causally related to the accepted January 10, 2020 employment injury. In a report dated April 14, 2021, Dr. Rivas described the January 10, 2020 work incident and diagnosed a complete rotator cuff tear or rupture of the right shoulder, right shoulder adhesive capsulitis, cervicgia, cervical radiculopathy, depression, anxiety, and insomnia. He provided similar reports on May 18, June 21, and September 14, 2021. In accompanying Form OWCP-5c's, Dr. Rivas addressed appellant's work capacity. He did not, however, specifically relate any of the diagnosed conditions to the accepted January 10, 2020 employment injury. The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> On April 30, 2021 Dr. Bulmer discussed appellant's history of pain in her right shoulder after a work injury 15 months earlier. He diagnosed a right shoulder partial-thickness rotator cuff tear, acromion impingement, a SLAP-type labral tear, adhesive capsulitis, and a work-related injury. Dr. Bulmer, similarly, did not attribute a specific condition to the accepted employment incident, and thus his opinion is not relevant to the underlying issue of causal

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<sup>6</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 2020). 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.

<sup>7</sup> *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>10</sup> *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

relationship.<sup>11</sup> As appellant has not provided relevant and pertinent new evidence regarding the underlying issue of causal relationship, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

The Board, accordingly, finds that 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.<sup>13</sup>

**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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 9, 2022 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 22, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees’ Compensation Appeals Board

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<sup>11</sup> *Id.*

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(iii); *S.B.*, Docket No. 22-0965 (issued September 22, 2022); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>13</sup> *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).