

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior orders are incorporated herein by reference. The relevant facts are as follows.

On May 14, 2020 appellant, then a 57-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2020 she sustained a right shoulder injury when she tripped over a container latch and fell while in the performance of duty.³ She stopped work on June 13, 2020.

By decision dated August 31, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 6, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the August 31, 2020 decision.

On November 30, 2020 a telephonic hearing was held.

By decision dated January 29, 2021, an OWCP hearing representative modified OWCP's August 31, 2020 decision to find that appellant had established a medical diagnosis in connection with the accepted April 30, 2020 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed right shoulder rotator cuff tear and the accepted employment incident.

Appellant appealed to the Board. By order dated September 27, 2021, the Board set aside the August 31, 2020 and January 29, 2021 OWCP decisions and remanded the case for OWCP to administratively combine the present case with OWCP File No. xxxxxx252 and issue a *de novo* decision on appellant's traumatic injury claim.⁴ On January 13, 2022 OWCP administratively combined OWCP File Nos. xxxxxx252 and xxxxxx711, with the latter serving as the master file.

By *de novo* decision dated January 13, 2022, OWCP accepted that the April 30, 2020 incident occurred as alleged and that a medical condition was diagnosed, but it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that appellant's right shoulder condition was causally related to the accepted employment incident.

² *Order Affirming Case*, Docket No. 22-0554 (issued November 18, 2022); *Order Remanding Case*, Docket No. 21-0618 (issued August 11, 2022).

³ OWCP assigned File No. xxxxxx711 to this claim. Appellant previously filed another Form CA-1 on April 2, 2020 alleging that on March 27, 2020 she sustained contusions and bruises on her hands while in the performance of duty, to which OWCP assigned File No. xxxxxx252.

⁴ *Supra* note 2.

Appellant appealed to the Board. By decision dated November 18, 2022, the Board affirmed the January 13, 2022 decision.

On September 27, 2023 appellant requested reconsideration. In support thereof, she submitted a narrative statement asserting she was not paid for the time she was out due to her surgery.

By decision dated December 6, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁷ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

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, appellant submitted a narrative statement asserting that she was not paid for the time she was out due to her surgery. The Board finds that she did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

⁵ This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application. 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607.

⁷ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 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.

⁸ *Id.* at § 10.606(b)(3).

⁹ *Id.* at § 10.608(a), (b).

Appellant did not submit any evidence with her request for reconsideration. As she has not submitted relevant and pertinent new evidence, appellant is not entitled to further review of the merits of her claim based on the third above-noted 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.

CONCLUSION

The Board further 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 December 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board