

**United States Department of Labor
Employees' Compensation Appeals Board**

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R.C., Appellant)	
)	
and)	Docket No. 19-0572
)	Issued: September 17, 2024
DEPARTMENT OF AGRICULTURE, FORT)	
SIMCOE JOB CORPS CENTER,)	
White Swan, WA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge

JURISDICTION

On January 16, 2019 appellant filed a timely appeal from a September 20, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 26, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

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

On May 28, 2015 appellant, then a 53-year-old automotive training leader, filed an occupational disease claim (Form CA-2) alleging that he developed a vasculitis rash due to factors of his federal employment including overexposure to the sun. He noted that he first became aware of his condition on May 1, 2015 and realized its relationship to his federal employment on May 8, 2015. Appellant did not stop work.

In a May 19, 2015 hospital discharge summary, Dr. Marvin Turck, an infectious disease specialist, noted that appellant related complaints of a fever and rash, which he attributed to working in a wooded area. He obtained bloodwork and a skin biopsy and performed a physical examination. Dr. Turck diagnosed rash and other non-specified skin eruption.

In a May 27, 2015 medical note, Dr. Rosa Maria Martinez, who specializes in internal medicine, noted that appellant related that his rash had worsened. She recommended medication.

In an undated statement, appellant described his symptoms and treatment since May 1, 2015. He indicated that his medical providers ruled out various infectious diseases and advised him that his symptoms may have been caused by sun exposure. Appellant denied any other significant sun exposure outside of work.

In a July 24, 2015 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary. OWCP afforded appellant 30 days to submit the requested information.

In August 20 and 24, 2015 responses to OWCP's questionnaire, appellant indicated that his injury was sustained by "staying in the sun for an extended period of time on or about May 1, 2015."

By decision dated August 28, 2015, OWCP denied appellant's occupational disease claim, finding that he had not submitted rationalized medical evidence establishing a causal relationship between his diagnosed condition and the accepted employment factors.

On May 4, 2016 appellant requested reconsideration of OWCP's August 28, 2015 decision.

OWCP thereafter received a September 14, 2015 narrative report by Dr. Richard S. Wilkinson, an integrative medicine specialist, that noted that appellant was seen for an office visit on May 27, 2015 for complaints of a rash and pain, which he attributed to spending time in the sun while helping with a baseball game on May 1, 2015. Dr. Wilkinson noted his medical treatment at the hospital and documented his examination findings. He diagnosed hypersensitive vasculitis caused by solar sensitivity/toxicity due to antibiotic use while working in a high sun exposure area

² *Order Dismissing Appeal*, Docket No. 19-0572 (issued February 27, 2019); *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 19-0572 (issued September 11, 2024).

for an extended period of time. Dr. Wilkinson explained that “this is a rare but possible reaction that can occur when these particular criteria are matched.”

By decision dated May 19, 2016, OWCP denied modification of its August 28, 2015 decision.

On April 17, 2017 appellant requested reconsideration of OWCP’s May 19, 2016 decision. In support thereof, he submitted an April 12, 2017 letter by his supervisor, V.G., who indicated that on or about May 1, 2015 they participated in a baseball game with students on an “extremely sunny day” at the employing establishment. V.G. noted that he observed appellant become flushed and lethargic, which continued for the next week, and that appellant showed him red spots on his lower extremities.

In an April 13, 2017 letter, Dr. Wilkinson amended his September 14, 2015 report to reflect that the diagnosis of hypersensitive vasculitis was a rare but “highly likely and highly probable reaction” to a combination of high sun exposure and use of the medication sulfamethoxazole and trimethoprim.

By decision dated June 26, 2017, OWCP denied modification of its May 19, 2016 decision.

On February 28, 2018 appellant requested reconsideration of OWCP’s June 26, 2017 decision. In support of his request, he submitted duplicate copies of the May 16, 2015 hospital reports previously of record and the results of a May 18, 2015 biopsy of the skin of his left thigh, which indicated leukocytoclastic vasculitis.

By decision dated March 26, 2018, OWCP denied appellant’s request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On April 20, 2018 appellant again requested reconsideration of OWCP’s March 26, 2018 decision. In support of his request, he submitted a photograph of his rash, a statement, and additional records from his hospital treatment on May 16, 2015, which included a normal upright chest x-ray, nursing and medication administration notes, and a report by Dr. John Tanner, a Board-certified emergency medicine physician, who noted that appellant related that his rash initially felt like a sunburn. Dr. Tanner performed a physical examination and noted visible rash, petechial and perpera, to the bilateral arms, legs, and feet. He diagnosed petechiae, purpura, and sepsis.

By decision dated July 12, 2018, OWCP denied appellant’s request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

By decision dated September 20, 2018, OWCP reissued its denial of appellant’s request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain

³ 5 U.S.C. § 8128(a).

limitations in exercising its authority.⁴ 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.⁵

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.⁶ When a timely request 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.⁷

ANALYSIS

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

In his timely request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The underlying issue on reconsideration is whether appellant met his burden of proof to establish a causal relationship between his diagnosed condition and the accepted employment factors. The Board notes that OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.⁹ Along with his April 20, 2018 reconsideration request, appellant submitted a photograph of his rash and a May 16, 2015 hospital report by Dr. Tanner, who noted visible rash and diagnosed petechiae, purpura, and sepsis. The Board finds that Dr. Tanner's report and the photograph specifically addressed the underlying issue of whether the evidence of record established a causal relationship between his diagnosed condition and the accepted employment factors. As such, the report and photograph

⁴ 20 C.F.R. § 10.607.

⁵ *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's 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.

⁶ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

⁷ *Id.* at § 10.608.

⁸ 20 C.F.R. § 10.606(b)(3); *see K.F.*, Docket No. 19-1846 (issued November 3, 2020).

⁹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). *See also R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020) (the Board found appellant had met her burden of proof as the medical evidence established visible injuries in the form of ecchymosis and edema).

constitute relevant and pertinent new evidence not previously of record. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b).¹⁰

Consequently, the Board will reverse OWCP's September 20, 2018 decision and remand the case for a *de novo* merit decision regarding appellant's occupational disease claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2018 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 17, 2024
Washington, DC

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

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

¹⁰ See *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).