

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

-----)
P.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS, VA)
GREATER LOS ANGELES HEALTH CARE)
SYSTEM, Los Angeles, CA, Employer)
-----)

Docket No. 24-0404
Issued: September 17, 2024

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2024 appellant filed a timely appeal from an October 27, 2023 merit decision and a November 20, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a); and (2) 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.*

² The Board notes that following the November 20, 2023 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.*

FACTUAL HISTORY

On August 13, 2023 appellant, then a 73-year-old retired employee development/personnel clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2016 he was prescribed medication for chronic pain which resulted in a severe allergic reaction involving his entire body while in the performance of duty.³ On the reverse side of the claim form, the employing establishment indicated that appellant was no longer an employee and that no further information was available.

Appellant provided a June 22, 2023 narrative statement asserting that he was prescribed methadone, morphine, and oxycodone for chronic pain, and that he shortly thereafter began to lose his appetite and experience rapid weight loss, nausea, vomiting, pain, and muscle spasms. He related that he experienced a heart attack in 2010 and was receiving care from the employing establishment.

In an August 21, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary information. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding the location of the injury.

In an August 21, 2023 letter, the employing establishment challenged appellant's claim, asserting that the claim was not timely filed.

OWCP subsequently received medical evidence. In an April 28, 1998 report, Dr. Daniel Paveloff, a Board-certified psychiatrist, listed appellant's symptoms of persistent weight loss, anorexia, loss of appetite, nausea, and abdominal cramping. He indicated that gastrointestinal studies, revealed no significant findings. Dr. Paveloff attributed his symptoms to reducing the dose of methadone.

In a May 8, 1998 report, Dr. Paveloff related that appellant was experiencing symptoms of opiate withdrawal. He diagnosed anorexia, nausea, and vomiting likely secondary to persistent methadone use, and significant withdrawal symptoms with decrease of methadone. Dr. Paveloff reported that following tapering of dosage of methadone appellant experienced decreased appetite, anxiety, chills, nausea, vomiting, tachycardia, restlessness, and shortness of breath. He opined that appellant was totally disabled from work for the period May 4 through 12, 1998.

On July 1, 1998 Dr. Paveloff completed a form report and diagnosed anorexia, nausea, and vomiting due to methadone use for chronic pain control. He indicated by checking a box marked "Yes" that disability was directly related to a previous medical condition of chronic low

³ OWCP assigned the present claim OWCP File No. xxxxxx670. Appellant has a June 28, 1977 traumatic injury claim, under OWCP File No. xxxxxx443, accepted for fracture of the left wrist, lumbosacral sprain, lumbar radiculitis, and temporary aggravation of L4-5 disc herniation. In 1998, he was treated for anorexia secondary to methadone toxicity and OWCP accepted that condition as a consequential injury as a result of his medication regime. On August 3, 2010 appellant filed a claim alleging that on January 1, 1998 he developed opiate toxicity as a result of treatment for his previously-accepted employment injuries. OWCP assigned that claim OWCP File No. xxxxxx226. OWCP has not administratively combined appellant's claims.

back pain due to degenerative disc disease and degenerative joint disease. Dr. Paveloff opined that appellant was intermittently totally disabled.

In a February 2, 2023 note, Dr. Pamela Wei-Ying Law, a Board-certified physiatrist, diagnosed lumbosacral radiculopathy, scaphoid fracture, and severe allergies to methadone originally noted on September 7, 2005 and to codeine, and opiate derivatives originally noted on November 4, 2008.

In a follow-up letter dated September 11, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the date of the August 21, 2023 development letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP continued to receive evidence. Dr. Paveloff completed attending physician's supplemental reports (Form CA-20a) on August 29, 1997, March 17 and July 1, 1998 diagnosing lumbar spine degenerative disc disease and degenerative joint disease with right lower extremity radiculopathy.

Appellant provided attending physician's reports (Form CA-20) with an illegible signature on August 10 and 20, 1998.

Dr. Paul J. Papanek, a physician Board-certified in occupational medicine, completed a March 20, 2008 report addressing his original work-related injury of June 28, 1977 and diagnosing lumbar radiculopathy. He related that appellant had not worked since May 1, 1999 and provided work restrictions.

Appellant completed a September 1, 2010 narrative statement and alleged that he began to lose weight in 1997 and was diagnosed with anorexia. He asserted that he had filed an OWCP claim in OWCP File No. xxxxxx443 after notifying his supervisor of his condition and of the medication error in the prescription of methadone and morphine resulting in anorexia. Appellant reported that he had received wage-loss compensation payments for his anorexia condition.

In a June 21, 2016 note, Dr. Leonard Kram, a Board-certified psychiatrist, treated appellant for chronic depression with symptoms suggestive of post-traumatic stress disorder. He related that appellant recounted injuring his back and left knee while in the military. Appellant then experienced chronic back and left knee pain and developed an allergy to opiate medications.

On September 18, 2023 Dr. Law provided work restrictions due to appellant's June 28, 1977 employment injury and diagnosed lumbosacral radiculopathy and scaphoid fracture. She completed an undated attending physician's report (Form CA-20) diagnosing lumbar disc herniation and left wrist fracture occurring on June 28, 1977. Dr. Law indicated by checking a box marked "Yes" that appellant's conditions were caused or aggravated by employment activities.

In letters dated September 20 and 30, 2023, appellant responded to OWCP's development questionnaire and the employing establishment's letter controverting of his claim asserting that his claim was timely filed as soon as he realized that he had a latent condition directly related to his employment. He became ill in 1997 with symptoms of weight loss, vomiting, severe pain, and muscle cramps diagnosed as anorexia as he was suffering from a severe allergic reaction to

medication prescribed for chronic pain, methadone. Appellant separated from his federal employment on May 31, 1999. He alleged that his allergies developed during the treatment for an accepted condition and chronic pain. Appellant filed a claim for medication error in OWCP File No. xxxxxx443 due to allergies to methadone. He experienced a heart attack in June 2009 and there was no specific medical reason for this provided.

By decision dated October 27, 2023, OWCP denied appellant's traumatic injury claim finding that it was untimely filed.

Appellant requested reconsideration on November 6, 2023. He resubmitted the September 1, 2010 narrative statement asserting that he first became aware of his condition in 1997 and Dr. Papanek's March 20, 2008 report. Appellant provided an unsigned 1998 form report.

By decision dated November 20, 2023, OWCP denied appellant's reconsideration request as he had not raised an argument or submitted evidence sufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of their claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each, and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.⁶ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁷

Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of the alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.⁸ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁹

⁴ *Supra* note 1.

⁵ *G.J.*, Docket No. 22-0778 (issued April 4, 2024); *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

⁶ *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *R.T.*, Docket No. 18-1590 (issued February 15, 2019); *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

⁷ *Id.*

⁸ 5 U.S.C. § § 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

⁹ *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

On his Form CA-1 appellant reported that his alleged injury occurred on August 1, 2016. However, he did not file his Form CA-1 until August 13, 2023, more than seven years later. Therefore, the filing of appellant's new traumatic injury claim is outside of the three-year time limitation.¹⁰

The Board also finds that there is no evidence of record that appellant's immediate supervisor had actual knowledge within 30 days of the alleged injury, or that appellant provided written notice of injury within 30 days of its occurrence.¹¹ In multiple statements, appellant asserted that he reported the previous injury to his supervisor. However, he produced no evidence to corroborate this assertion or to substantiate that his immediate supervisor was aware of the alleged injury within 30 days of its occurrence or that he submitted written notice within 30 days.¹² In response to the August 21, 2023 development letter, appellant submitted medical reports which are irrelevant to the timeliness issue. The Board thus finds that appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

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 or her own motion or on application.¹³

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.¹⁴

¹⁰ *Supra* note 6.

¹¹ *Supra* note 8.

¹² *J.S.*, Docket No. 22-0347 (issued September 16, 2022); *Larry E. Young*, *supra* note 8.

¹³ 5 U.S.C. § 8128(a); *see R.H.*, Docket No. 21-1382 (issued March 7, 2022); *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).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see R.H.*, *id.*; *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.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

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).

In his request for reconsideration, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁸

The Board further finds that appellant has not provided any relevant and pertinent new evidence in support of his request for reconsideration. The evidence submitted on reconsideration included the September 1, 2010 narrative statement asserting that he first became aware of his condition in 1997 and Dr. Papanek's March 20, 2008 report. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.¹⁹ As such, this evidence is insufficient to warrant merit review. Appellant also submitted additional medical evidence. However, the medical evidence provided is irrelevant to the underlying issue of the timely filing of his claim. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²⁰ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).²¹ The Board, accordingly, finds that appellant

¹⁵ *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 (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.

¹⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁷ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁸ *See T.F.*, Docket No. 22-0573 (issued March 31, 2023); *A.A.*, Docket No. 21-0774 (issued January 11, 2022); *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

¹⁹ *See D.B.*, Docket No. 22-1241 (issued April 27, 2023); *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁰ *C.C.*, Docket No. 22-1240 (issued June 27, 2023); *D.P.*, Docket No. 13-1849 (issued December 19, 2013).

²¹ *C.Y.*, Docket No. 21-1049 (issued February 1, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *see also G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, *supra* note 19.

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.²²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a). The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 27 and November 20, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

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

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

²² *C.Y., id.; M.O.*, Docket No. 21-0459 (issued December 29, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).