

FACTUAL HISTORY

On April 7, 2010 appellant, then a 41-year-old nurse, filed a claim for workers' compensation benefits alleging that she sustained a traumatic injury in the performance of duty on April 6, 2010 while helping to lift a patient onto an examination table. She described the nature of her injury as a bilateral strain of her upper trapezius muscles and a lumbosacral strain with radicular pain on the left.

In a decision dated August 17, 2010, OWCP denied appellant's claim for compensation on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related event. Specifically, it found that the medical evidence did not include a physician's explanation as to whether appellant's diagnosed condition was caused or aggravated by lifting a patient onto an examination table on April 6, 2010.

In an attached statement of appeal rights, OWCP explained that appellant could request reconsideration if she had additional evidence or legal argument that she believed would establish her claim:

“The request must be made within one calendar year of the date of the decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted. This evidence might include medical reports, sworn statements or a legal argument not previously made, which apply directly to the issue addressed by this decision. In order to ensure that you receive an independent evaluation of the new evidence, persons other than those who made this determination will reconsider your case.” (Emphasis the original.)

On October 14, 2010 appellant requested reconsideration. She completed the appeal request form that was attached to OWCP's August 17, 2010 decision. This form instructed her as follows: “If you decide to appeal this decision, read these instructions carefully. You must specify which procedure you request by checking one of the options listed below. Place this form on top of any materials you submit. **Be sure to mail this form, along with any additional materials, to the appropriate address.**” (Emphasis the original.) Appellant indicated with a mark that she was requesting reconsideration. She signed the form and mailed it to OWCP.

In a decision dated October 21, 2010, OWCP denied appellant's request for reconsideration. It explained that to warrant a reopening of her case, she had to clearly identify the grounds upon which she was requesting reconsideration, and she had to submit relevant evidence or legal contentions not previously considered. As appellant's request neither raised substantive legal arguments nor included new and relevant evidence, OWCP found it insufficient to warrant a review of the prior decision.

On appeal, appellant takes issue with a statement OWCP made in its August 17, 2010 decision denying her claim for compensation.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.³ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and 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.⁴

A request for reconsideration must be sent within one year of the date of OWCP decision for which review is sought.⁵ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Appellant had one calendar year to request reconsideration of OWCP's August 17, 2010 decision denying her claim for workers' compensation benefits. Her October 14, 2010 request was therefore timely. The question for determination, therefore, is whether that request met at least one of the three standards for obtaining a merit review of her case.

Appellant's request for reconsideration was insufficient to warrant merit review. She offered no argument or evidence to support it. Appellant's request consisted solely of a mark on an appeal request form. A timely request for reconsideration that is not supported by additional evidence or argument for error is *prima facie* insufficient to warrant a merit review of the case.⁷ Because appellant's request met none of the standards that would justify the reopening of her case, the Board finds that OWCP properly denied her request for reconsideration. The Board will affirm OWCP's October 21, 2010 decision.

Appellant's argument on appeal is immaterial to the sufficiency of her October 14, 2010 request for reconsideration, which is the only issue the Board may consider on this appeal.

³ 5 U.S.C. § 8128(a).

⁴ *Id.* § 10.606.

⁵ *Id.* § 10.607(a).

⁶ *Id.* § 10.608.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.6 (January 2004).

CONCLUSION

The Board finds that OWCP properly denied appellant's October 14, 2010 request for reconsideration of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board