

ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 1, 2011 appellant, then a 43-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2010 a 12-gauge shotgun violently recoiled and struck the right side of her face. The incident resulted in chronic facial pain, swelling and bruising which was later diagnosed as trigeminal neuralgia disease.

In a December 15, 2010 medical report, Dr. Mohammad Ismail, a Board-certified neurologist, reported that appellant was first seen six months prior with a history of right-sided facial pain. Appellant was shooting a heavy rifle which touched the right side of her face and may have caused her condition. Dr. Ismail diagnosed trigeminal neuralgia, headache and cervicalgia. In a December 23, 2011 care certificate and duty status report, he provided appellant with work restrictions. In a December 23, 2010 attending physician's report (Form CA-20), Dr. Ismail diagnosed trigeminal neuralgia and stated that he was unsure if appellant's condition was caused by her employment activity, noting that the condition can occur without injury as well.

In an undated narrative statement, appellant reported that the first time she used the shotgun was on September 16, 2008 when she fired the weapon. She felt violent recoil along the right side of her face. Appellant stated that she used the shotgun again on February 3, 2010 which caused her right cheek and jaw area to bruise with a red bump. She also experienced burning pains on the right side of her face in March 2010 and was later diagnosed with trigeminal neuralgia disease, having had no prior complaints or conditions of chronic facial pain until the employment incident.

By decision dated March 21, 2011, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that her trigeminal neuralgia disease was causally related to the accepted February 3, 2010 employment incident.

By letter dated April 7, 2011, appellant requested a hearing before the Branch of Hearings and Review. She stated that she was not diagnosed with trigeminal neuralgia disease prior to the February 3, 2010 employment incident and had no other conditions which would predispose her to this disease.

At the August 10, 2011 hearing, appellant testified that she was initially injured on September 16, 2008 when her face became swollen after firing a shotgun.³ She fired the weapon again on February 3, 2010 when it recoiled and hit her face. Appellant sought emergency treatment on February 4, 2010 and was diagnosed with trigeminal neuralgia. She argued that her disease was a result of using the shotgun and referenced other instances where individuals who

³ The Board notes that the hearing representative informed appellant that the September 16, 2008 incident would not be considered under this claim and that appellant could file a different claim for the prior incident.

had experienced blows to the head and face were diagnosed with trigeminal neuralgia. Appellant was placed on light duty since October 2010 as a result of the medication she was taking for her disease. The record was held open for 30 days.

By decision dated October 26, 2011, an OWCP hearing representative affirmed the March 21, 2011 decision, finding that the medical evidence was insufficient to establish that appellant's trigeminal neuralgia disease was causally related to the accepted February 3, 2010 employment incident. The hearing representative noted that Dr. Ismail stated that he was unsure if her condition was caused or aggravated by the February 3, 2010 employment incident.

By letter dated February 1, 2012, appellant requested reconsideration of OWCP's October 26, 2011 decision. She stated that on April 4, 2010 she sought treatment at the emergency room and a Dr. Clifford Cloonan diagnosed trigeminal neuralgia disease. Appellant was then referred to Dr. Ismail for follow-up treatments. She repeated arguments previously made, stating that her condition was caused by the February 3, 2010 employment incident. Appellant did not submit any evidence in support of her statement.

By decision dated April 16, 2012, OWCP denied appellant's request for reconsideration finding that she did not raise any substantive legal questions or include new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only OWCP decision before the Board on appeal is the April 16, 2012 decision denying appellant's application for review. As more than 180 days elapsed from the date of the

⁴ *D.K.*, 59 ECAB 141 (2007).

⁵ *K.H.*, 59 ECAB 495 (2008).

most recent merit decision of October 26, 2011 to the filing of appellant's appeal on May 7, 2012, the Board lacks jurisdiction to review the merits of appellant's claim.⁶

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her February 1, 2012 application for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant's argument that her injury was employment related and her reference to Dr. Ismail's reports are matters previously considered and addressed by OWCP. The underlying issue was whether appellant's injury was causally related to the accepted February 3, 2010 employment incident. That is an issue which must be addressed by relevant medical evidence.⁷ In this case, appellant failed to submit any new and relevant medical evidence addressing causal relationship.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 501.3(e) requires that an application for review by the Board be filed within 180 days of the date of OWCP's final decision being appealed.

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board