

injury; and (2) whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 26, 2012 appellant, then a sales associate, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2012 a safe's door closed on her right thumb. As her injury appeared to be minor, with minimal or no lost time from work, the claim was administratively handled to allow for payment of a limited amount of medical expenses. When appellant's medical bills exceeded \$1,500.00, OWCP adjudicated the claim and accepted the October 22, 2012 traumatic injury for right open wound of finger with complications.

On July 1, 2015 appellant filed a claim for compensation (Form CA-7) for the dates of May 22 and June 22 and 24, 2015. The accompanying time analysis form indicated that appellant took two hours of leave without pay (LWOP) on those dates for a total of six hours to attend occupational therapy on June 22 and 24, 2015.

In a July 7, 2015 letter, OWCP advised appellant of the deficiencies in her claim and requested that she provide reports regarding her physical therapy on June 22 and 24, 2015 and either medical examination, physical therapy, or testing on May 22, 2015. Appellant was afforded 30 days to provide the requested evidence. No additional evidence pertaining to the dates claimed were provided.

By decision dated September 16, 2015, OWCP denied appellant's claim for compensation as there was no evidence of record to support that appellant lost time from work on May 22 and June 22 and 24, 2015 due to her accepted injury.

On October 15, 2015 OWCP received appellant's September 28, 2015 request for reconsideration. Appellant indicated that she had attended occupational therapy those three dates.

Evidence received in support of her reconsideration request included a copy of a date log from WSMC -- Sports Medicine that ranged from June 22 through July 24, 2015. The date log reflected that on June 22 and 24, 2015 appellant had occupational therapy for 30 minutes with Regina Pascal. No treatment notes were received.

By decision dated January 6, 2016, OWCP denied modification of the September 16, 2015 decision.

On January 20, 2016 OWCP received appellant's January 15, 2015 request for reconsideration. Appellant advised that she was unaware that something in writing was needed from her occupational therapist. No evidence was received.

By decision dated February 1, 2016, OWCP denied appellant's request for reconsideration without merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.² For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. When the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

OWC's procedure manual provides that no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature or the medical procedure and/or the need to travel a substantial distance to obtain the medical care.⁵

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his disability and entitlement to compensation.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that on October 22, 2012 appellant sustained an open wound of finger with complications and paid medical benefits. Appellant filed a claim for wage-loss compensation for the dates of May 22 and June 22 and 24, 2015. She must submit rationalized medical evidence specifically addressing the claimed period of disability. Without this requirement, a claimant could effectively self-certify that she was disabled and entitled to compensation for a particular date or dates.⁷

While a date log from WSMC -- Sports Medicine reflected that appellant underwent occupational therapy with Ms. Pascal for 30 minutes on June 22, 2015 and 30 minutes on

² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

³ See *Amelia S. Jefferson*, *id.*

⁴ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

⁶ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

June 24, 2015, there is no evidence of record to support that such therapy was due to the October 22, 2012 employment injury. However, there is no evidence of record that those sessions of occupational therapy were authorized, or that therapy performed on the dates in question was for the accepted injury.⁸ Accordingly, the Board finds that OWCP properly denied the claim for disability.

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁹ OWCP's 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.¹⁰ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹²

ANALYSIS -- ISSUE 2

On January 20, 2016 OWCP timely received appellant's January 15, 2015 request for reconsideration of its January 6, 2015 decision denying her claim for compensation for the dates May 22, June 22 and 24, 2015. The question for determination is whether her request met at least one of the three standards for obtaining a merit review of her case.

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP and she did not submit relevant and pertinent new evidence not previously considered by OWCP.

Appellant advised that she was unaware that something in writing was needed from her occupational therapist. She did not submit any further evidence regarding her occupational therapy appointments. The underlying issue is a medical question for which she must submit

⁸ Compare Docket No. 11-2108 (issued June 1, 2012) (where Board remanded the case for further development of the evidence wherein appellant claimed wage-loss benefits for physical therapy appointments several months after beginning regular physical therapy for the accepted injury.

⁹ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(3).

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608(b)(3).

medical evidence specifically addressing the claimed period of disability. Appellant offered no new relevant and pertinent evidence.

A claimant may be entitled to a merit review by submitting new and relevant evidence or argument. Appellant did not do so in this case. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish disability for the claimed dates of May 22 and June 22 and 24, 2015 due to the October 22, 2012 employment injury. The Board also finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 1 and January 6, 2016 are affirmed.

Issued: July 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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