

FACTUAL HISTORY

On September 9, 2006 appellant, then a 43-year-old part-time flexible carrier, filed a traumatic injury claim alleging that he sustained an injury in the performance of duty that day when a pedestrian struck him in the eye.

In a decision dated December 22, 2010, OWCP denied compensation. It found that the evidence failed to demonstrate that an injury occurred as alleged. OWCP noted a basic inconsistency between appellant's statement and that of the alleged attacker. Further, the police did not pursue the matter and employing establishment personnel who arrived on the scene did not see an injury to appellant's eye. Such circumstances, OWCP found, cast doubt that an injury occurred as alleged.²

Appellant requested reconsideration on May 25, 2011. He stated that he was enclosing a police log to show that he was told to follow the assailant and report his location so that the police knew where to go. "I trust this will clear up any ideas of my being off my assigned route, especially since I am a part[-]time flexible without an assigned route and have been for the past five years."

On June 9, 2011 OWCP denied appellant's reconsideration request. It found that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of its prior decision.

On appeal, appellant argues, among other things, that he incurred his injury while on duty and that the doctors concurred on the injury. He adds that the police issued a citation to the individual.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at anytime 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

² The first footnote of OWCP's decision mentioned that appellant was off his assigned route and traveling in the wrong direction, at least according to a supervisor who arrived on the scene. OWCP noted, however, that the issue was never addressed in the case.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606.

A request for reconsideration must be sent within one year of the date of OWCP's 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 timely filed his May 25, 2011 reconsideration request within one calendar year of OWCP's December 22, 2010 merit decision denying his claim. The question on appeal, therefore, is whether this request met at least one of the standards for obtaining a merit review of his case.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it erroneously applied or interpreted it in denying his claim for compensation benefits.

Appellant's request did not advance a new and relevant legal argument. He attempted to explain why he was off his assigned route, but that was not the reason OWCP denied his claim. OWCP denied compensation because certain inconsistencies in the evidence cast doubt on whether the injury occurred as alleged. Appellant's argument was therefore irrelevant.

Appellant's request did not provide relevant and pertinent new evidence not previously considered by OWCP. He stated that he was submitting a police log to explain his location, but again, this was irrelevant to the grounds upon which OWCP denied his claim.

Accordingly, 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, he did not advance a relevant legal argument not previously considered by OWCP, and he did not submit relevant and pertinent new evidence not previously considered by it. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review. The Board will affirm the June 9, 2011 decision.

Appellant argues on appeal that he was on duty at the time of his injury, but OWCP does not dispute this. OWCP denied his claim on other grounds. The arguments appellant makes on appeal, including the argument that the police issued a citation to the individual, were not included in his February 1, 2011 reconsideration request. The Board may not review such new arguments to determine whether the February 1, 2011 request met one of the standards for reopening his case.⁷

⁵ *Id.* § 10.607(a).

⁶ *Id.* § 10.608.

⁷ *See id.* at § 501.2(c)(1).

CONCLUSION

The Board finds that OWCP properly denied appellant's May 25, 2011 reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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