

ISSUE

The issue is whether OWCP properly denied appellant's January 30, 2012 request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 14, 2011 appellant, then a 50-year-old social security administration (SSA) claims examiner, filed a traumatic injury claim alleging that he sustained a pulled muscle in his lower back and neck with a sore left wrist that day. He slipped on a patch of ice in the parking lot at work while he was getting out of his car. Appellant stopped work.

On February 17, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional factual and medical evidence, to support his claim.

In a February 17, 2011 progress note, Dr. Suraiya Siddique, a Board-certified internist, stated that appellant had acute pharyngitis. The history of injury noted that appellant had fallen on the ice on February 14, 2011. Dr. Siddique stated that appellant's chronic back and hip pain were aggravated by a recent fall. He excused appellant from work until he recovered completely and his pain improved.

On February 21, 2011 appellant responded to OWCP's request for further information. He stated that on February 14, 2011 he parked his vehicle and slipped on ice when he stepped onto the parking lot. Appellant fell on his left arm, shoulder and back. He noted that there were no witnesses to the incident and listed where he received medical treatment. Appellant reported that his lower back, shoulder and wrist pain increased daily and he took pain medication to help him sleep.

In a letter dated March 10, 2011, the employing establishment controverted appellant's claim. It noted that the premises of the office building was owned and maintained by JOPESSA Ventures, and leased by the employing establishment. The employing establishment noted that appellant's fall occurred in its parking lot, which was for the exclusive use of employee's only. It attached a copy of the lease of the office building and parking lot.

In a decision dated March 24, 2011, OWCP found that appellant's injury occurred in the employing establishment's parking lot, which was for exclusive use by employees. It denied his claim, however, finding insufficient medical evidence to establish a back condition as a result of the February 14, 2011 employment incident.

On January 30, 2012 appellant requested reconsideration. He stated that he experienced constant pain in his back, which radiated outward to his shoulder blades and caused muscle spasms in both sides and rib areas of his back. Appellant noted that he was unable to lift anything over five pounds, stand for more than 5 to 10 minutes or walk a short distance without experiencing pain, numbness, burning and tingling. He reported that a January 24, 2011 examination revealed that the L12 vertebrae of his back was twisted during the February 14, 2011 slip and fall was now fractured. Appellant explained that it did not show in the preliminary

x-rays because of swelling. He stated that he did not experience spinal problems of the L12 area before February 14, 2011.

By decision dated February 13, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district OWCP.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁶

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

ANALYSIS

The Board has no jurisdiction to review the March 24, 2011 decision denying appellant's traumatic injury claim. Appellant did not file a timely appeal of that decision and it is not before the Board on this appeal. The only decision the Board may review is the February 13, 2012 decision denying his request for reconsideration. The Board finds that OWCP properly denied appellant's request for reconsideration because his request did not meet any of the requirements for obtaining merit review.

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

On January 30, 2012 appellant submitted a request for reconsideration. He described the February 14, 2011 incident and related that he experienced pain in his back, arms and shoulders. OWCP denied appellant's claim on the grounds of insufficient medical evidence. Appellant did not submit any additional medical evidence with his request. He merely stated that an x-ray revealed a spinal fracture, but he did not submit the x-ray reports. Because appellant's statement does not constitute probative medical evidence, it is not relevant to the issue on appeal.¹⁰ He did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument nor submit relevant medical evidence not previously considered by OWCP. Accordingly, OWCP properly denied his request for reconsideration as he did not meet any of the requirements sufficient to warrant merit review.

On appeal, appellant described the February 14, 2011 injury and related his complaints of pain and medical treatment. His assertions, however, do not satisfy any of the criteria necessary to reopen a case for merit review as they do not show that OWCP erroneously applied a specific point of law nor advance any new legal argument.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's January 30, 2012 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹⁰ The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2012
Washington, DC

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

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

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