



On appeal, appellant asserts that workplace security videotapes would verify that he was injured in the performance of duty. He contends that, following the injury, he promptly reported to a hospital emergency room as ordered.

### **FACTUAL HISTORY**

On May 6, 2013 appellant, then a 27-year-old corrections officer, filed a traumatic injury claim (Form CA-1) claiming that earlier that day, he sustained right upper extremity and back pain when a prisoner who he was escorting collapsed into his arms.

In a May 13, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including factual information corroborating the claimed incident and a medical report supporting that the incident caused an injury. Appellant was afforded 30 days to submit such evidence. However, no additional evidence was received by OWCP prior to June 18, 2013.

By decision dated June 18, 2013, OWCP denied appellant's claim on the grounds that fact of injury was not established. It accepted that the May 13, 2013 incident occurred at the time, place and in the manner alleged. OWCP further found, however, that as appellant did not submit any medical evidence supporting causal relationship, he did not establish that he sustained an injury as claimed.

In a September 23, 2013 letter, appellant requested reconsideration. He did not submit additional evidence or argument.

By decision dated October 4, 2013, OWCP denied reconsideration as appellant's September 23, 2013 reconsideration did not raise substantive legal questions or include new and relevant evidence. It was therefore insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that 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.<sup>4</sup> Section 10.608(b) provides that when an application for review of the merits of a claim 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.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>6</sup> The claimant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>7</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>8</sup>

### **ANALYSIS**

Appellant claimed that he sustained right upper extremity and back injuries when he caught a collapsing prisoner. OWCP denied the claim, by decision dated June 18, 2013, as appellant had submitted no medical evidence establishing an injury. Appellant requested reconsideration by September 23, 2013 letter, but did not present a legal argument or submit additional evidence. OWCP denied reconsideration by October 4, 2013 decision, finding that appellant's letter did not warrant a merit review as it did not raise substantive legal questions or include new, relevant evidence.

A claimant may be entitled to a merit review by submitting new and relevant evidence; however, appellant did not do so in this case. The only document submitted pursuant to his September 23, 2013 letter requesting reconsideration was the letter itself, which did not present any legal argument. Appellant did not provide additional evidence.

The Board accordingly 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that security videotapes would verify that he was injured in the performance of duty. He contends that he promptly reported to a hospital emergency room as ordered. These arguments pertain to the merits of the claim. As explained above, the Board does not have jurisdiction over the merits of the case on the present appeal.

### **CONCLUSION**

The Board finds that OWCP properly denied reconsideration.

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<sup>6</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>7</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>8</sup> *Annette Louise*, 54 ECAB 783 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 4, 2013 is affirmed.

Issued: September 15, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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