

FACTUAL HISTORY

On August 26, 2014 appellant, then a 57-year-old maintenance operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2014 he sprained his left wrist at work when he slipped in a stairwell on a peanut shell and used his left hand to break his fall. The employing establishment noted that he did not report the injury until August 20, 2014. Appellant did not stop work.

Appellant submitted his July 22, 2014 e-mail to his supervisor, describing how he injured his left wrist earlier that day. He stated that, while climbing stairs, his right foot slid out from under him, causing him to extend his left arm outward to catch his fall.

In an August 27, 2014 letter, the employing establishment controverted the claim, contending that appellant submitted medical bills for June 23 and July 2, 2014 outpatient hospital treatment, although he alleged a July 22, 2014 injury.

In a September 5, 2014 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including factual evidence corroborating the July 22, 2014 incident, and a report from his attending physician explaining how and why the incident would cause the claimed injury. It afforded him 30 days to submit such evidence.

In response, appellant submitted two photographs of the stairway where the claimed incident occurred, and an August 7, 2014 accident interview form in which he reiterated his account of slipping on the peanut shell on July 22, 2014. He also provided July 22, 2014 emergency department discharge instructions for a wrist sprain and back strain. These forms were not signed or reviewed by a physician.

By decision dated October 10, 2014, OWCP denied appellant's claim as causal relationship was not established. It accepted that the July 22, 2014 incident occurred at the time, place, and in the manner alleged. However, appellant did not submit medical evidence establishing that the accepted incident caused an injury.

In an October 6, 2014 letter, received by OWCP on October 24, 2014, appellant responded to its September 5, 2014 letter. He asserted that on July 22, 2014 he injured his left wrist when he attempted to break his fall down steps at work. Appellant asserted that he reported the injury to his supervisor immediately, who insisted that he be evaluated at a hospital. He contended that he delayed filing the claim only because he did not receive a bill from the hospital until August 28, 2014. Appellant explained that he accidentally submitted June 23 and July 2, 2014 hospital bills pertaining to a family member with the same name.

Appellant requested reconsideration by January 19, 2015 appeal request form received by OWCP on January 26, 2015. He did not submit additional evidence or argument.

By decision dated February 5, 2015, OWCP denied reconsideration, finding that his request form and October 7, 2014 statement did not present new, relevant evidence or argument regarding the critical, medical issue of causal relationship.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provide 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.⁴ 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)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ He or she need only submit relevant, pertinent evidence not previously considered by OWCP.⁷ 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)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

Appellant claimed that he sprained his left wrist at work on July 22, 2014 while attempting to break a fall. OWCP denied the claim by an October 10, 2014 decision, finding that the July 22, 2014 incident occurred as alleged, but that appellant did not submit medical evidence establishing causal relationship.

Following the October 10, 2014 decision, appellant submitted his October 6, 2014 letter, received by OWCP on October 24, 2014. He contended that he reported the July 22, 2014 incident to his supervisor immediately, but delayed filing the claim as he did not receive any medical bills until August 28, 2014. Appellant also confused his medical bills with those of a family member with the same name.

Appellant requested reconsideration by January 19, 2015 appeal request form. OWCP denied reconsideration by February 5, 2015 decision, finding that appellant's October 6, 2014 letter and July 19, 2015 form did not contain new, relevant evidence or argument.

The Board finds that OWCP appropriately denied reconsideration as appellant's October 24, 2014 argument was not relevant to the claim. The critical issue was the medical

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

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

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

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

⁸ *Annette Louise*, 54 ECAB 783 (2003).

question of whether the accepted July 22, 2014 incident caused the claimed left wrist sprain. Appellant's letter and appeal request form are not medical evidence, and are thus irrelevant to that issue. Therefore, they do not comprise a basis for reopening the case.⁹

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence. Appellant did not do so in this case. He also did not show that OWCP erroneously applied or interpreted a point of law. Lastly, appellant did not advance a legal argument not previously considered by OWCP. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that he did in fact submit all available medical evidence and made repeated efforts to comply with OWCP's requests for information. He contends that additional medical evidence accompanying his appeal request is sufficient to meet his burden of proof. However, this evidence was not reviewed by OWCP. The Board notes that it may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.¹⁰ Therefore, the Board cannot review the evidence accompanying appellant's appeal.

CONCLUSION

The Board finds that OWCP properly denied reconsideration of the merits of appellant's claim pursuant to 5 U.S.C. § 8128(a).

⁹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁰ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2015 is affirmed.

Issued: November 20, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board