

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 1, 2014 appellant, then a 64-year-old human resources assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2014 he injured his back and neck in the performance of duty. He reported that he was walking during lunch time and fell on the sidewalk, hitting his back and neck. Appellant submitted a form report (Form CA-20) dated September 9, 2014 from Dr. Thomas Duttmacher, a family practitioner. Dr. Duttmacher provided a history of a trip and fall on a sidewalk, with a diagnosis of diabetes mellitus. The record also contains a note dated October 29, 2014 from Dr. Duttmacher reporting that appellant was being treated for a back injury on July 17, 2014. Appellant submitted a claim for compensation (Form CA-7) from August 1 to September 2, 2014.

In a letter to appellant dated November 18, 2014, OWCP noted that it was unclear if he was in the performance of duty at the time of the alleged employment incident. It advised him that the evidence did not establish that he experienced the incident alleged to have caused injury. In addition, there was no medical evidence with a firm diagnosis and an opinion on causal relationship with employment. OWCP included a questionnaire with respect to the factual circumstances regarding the incident, the filing of the claim, and the medical treatment. Appellant was advised to submit additional evidence within 30 days. OWCP also requested in a November 18, 2014 letter that the employing establishment submit information regarding the alleged July 17, 2014 employment incident.

Appellant responded in a November 25, 2014 letter that on July 17, 2014 he was on his lunch break and walking in the parking lot on the employing establishment premises when he tripped and fell. On December 3, 2014 OWCP received a response from the employing establishment confirming that the July 17, 2014 incident occurred during a lunch break on the employing establishment premises.

By decision dated December 18, 2014, OWCP denied the claim for compensation. It found there was no medical evidence with a firm diagnosis in connection with the employment incident.

On April 27, 2015 appellant submitted a request for reconsideration. He stated that he needed a referral to a physician, a Dr. Pizzarello. The record also contains a memorandum of telephone call (Form CA-110) indicating that appellant had left a voice mail on April 27, 2015 requesting a referral letter.

By decision dated May 13, 2015, OWCP found the reconsideration request was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP."⁵ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

Appellant requested reconsideration on April 27, 2015 of a December 18, 2014 OWCP decision denying his claim for compensation. OWCP had found the medical evidence was insufficient to establish an injury in the performance of duty on July 17, 2014. To be entitled to a merit review of his claim, the reconsideration request must meet one of the three requirements under 20 C.F.R. § 10.606(b)(3) discussed above.

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. He indicated only that he needed a referral to a physician. Appellant did not discuss a point of law or advance a new and relevant legal argument. Moreover, he did not submit any relevant and pertinent new evidence not previously considered by OWCP. The denial of the claim was based on the medical evidence, and appellant did not submit any new evidence with his reconsideration request.

Appellant therefore did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). He 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 submit relevant and pertinent evidence not previously considered by OWCP. Accordingly, the Board finds that OWCP properly denied review of the merits of his claim for compensation.

On appeal, appellant provided an additional response to the questions posed in the November 18, 2014 questionnaire. As discussed above, the Board does not have jurisdiction over the merits of the claim for compensation in this case. The only issue presented on appeal was whether appellant had met any of the requirements of 20 C.F.R. § 10.606(b)(3) to establish entitlement to a merit review of his claim. For the reasons noted, OWCP properly denied merit review in the May 13, 2015 decision.

⁴ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2015 is affirmed.

Issued: February 3, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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