

FACTUAL HISTORY

On February 18, 2015 appellant, then a 28-year-old construction representative, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2015 the government vehicle he was driving was “rear ended” while stopped at an intersection. He noted that, after the accident, he had a slight headache and pain in his jaws because his jaws clamped shut rapidly during the collision. Appellant did not submit any evidence with his claim.

By letter dated February 20, 2015, OWCP advised appellant that further medical evidence was necessary to establish his claim. Appellant was afforded 30 days to submit the necessary evidence.

Appellant did not respond to the February 20, 2015 OWCP request for further medical evidence.

By decision dated March 25, 2015, OWCP denied appellant’s claim. While OWCP accepted that the incident had occurred as alleged, it denied the claim as there was no medical evidence diagnosing a condition causally related to the accepted work event.

On April 27, 2015 appellant requested reconsideration. He explained that the accident occurred on February 12, 2015 in Lackawanna, New York, and that he wanted medical verification that he did not have a concussion before he traveled home. Appellant noted that no evidence of a concussion was discovered. He submitted, *inter alia*, notes from Western New York Immediate Care, which related that appellant was evaluated by Dr. Dawn Bingeman, Board-certified in emergency medicine, and that he had a normal examination. Appellant was released to regular duties without restrictions.

By decision dated July 13, 2015, OWCP denied modification of appellant’s claim, as the medical evidence was devoid of a definitive diagnosis or any opinion explaining how a claimed condition was related to the February 12, 2015 employment incident.

On March 22, 2016 appellant again requested reconsideration. He asked OWCP to reconsider his request for payment of a medical bill that was the result of a medical checkup that his supervisor strongly recommended he obtain after he was in the motor vehicle accident. In support thereof, appellant submitted a sworn statement from his supervisor, indicating that he was his employee, that he was in an automobile accident when his government vehicle was struck from behind while waiting at a traffic light, and that the impact damaged the vehicle to the extent that it was a total loss. His supervisor contended that he strongly recommended that appellant be evaluated by a medical professional prior to allowing himself to drive from Lackawanna, New York, to his duty station in Ohio, as he was concerned about a concussion or potentially a traumatic brain injury. He noted that appellant was advised by the attending physician that he would be allowed to drive.

By decision dated April 1, 2016, OWCP denied reconsideration because the new evidence was not sufficient to warrant review of the July 13, 2015 decision which denied appellant’s claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

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

The underlying issue in this case is whether appellant submitted sufficient medical evidence establishing an injury causally related to the accepted February 12, 2015 employment incident. That is a medical issue which must be addressed by relevant, new medical evidence.⁶

With his request for reconsideration, appellant explained that he had sought medical evaluation at the hospital emergency room following the accepted motor vehicle collision at the request of his supervisor, because the collision occurred while he was driving from his work site in Lackawanna, New York to his duty station in Ohio. He submitted a sworn statement from his supervisor substantiating that he strongly recommended that appellant be evaluated by a medical professional before driving back to the duty station as there was concern that appellant may have sustained a concussion or a traumatic brain injury.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered. His allegations are not relevant to the issue of whether the medical evidence of record establishes a diagnosed condition causally related to the accepted incident. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).⁷

² *Id.* Under section 8128 of FECA, "[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." *Id.* at § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ 20 C.F.R. § 10.606(b).

As to the submission of relevant and pertinent new evidence not previously considered by OWCP, the Board also finds that appellant failed to meet this requirement. The evidence submitted on reconsideration consisted of a sworn statement from his supervisor relating that he had recommended that appellant be evaluated by a medical professional prior to allowing himself to continue his ride home from Lackawanna, New York to his duty station in Ohio. The underlying issue was whether appellant had a diagnosed condition caused by the accepted employment factors. This evidence was not relevant to the issue of causal relationship because it was not medical evidence, but factual information.⁸ OWCP properly explained in the April 1, 2016 decision that the evidence appellant submitted in support of his request for reconsideration was new; however, it was immaterial, irrelevant, and inconsequential to the underlying issue. The evidence, therefore, is insufficient to require merit review of the claim.⁹

The Board finds that 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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).¹¹

⁸ D.A., Docket No. 17-0535 (issued June 27, 2017).

⁹ *Supra* note 6.

¹⁰ *Supra* note 8.

¹¹ 20 C.F.R. § 10.304 of OWCP's regulations provides that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized by 20 C.F.R. § 10.300. The Board has held that OWCP may approve payment for medical expenses incurred even if a CA-16 form authorizing medical treatment and expenses has not been issued and the claim is subsequently denied. Payment in such situations must be determined on a case-by-case basis. *See R.S.*, Docket No. 16-0142 (issued February 25, 2016). On return of the case record OWCP shall determine whether given the emergency circumstance of this case it may approve appellant's medical expense.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2016 is affirmed.

Issued: August 9, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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