

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 25, 2010 appellant, then a 49-year-old mail handler, injured her right shoulder while lifting a heavy box filled with mail. She filed a traumatic injury claim (Form CA-1) on March 29, 2010, which OWCP initially accepted for right shoulder sprain. OWCP subsequently expanded appellant's claim to include right shoulder rotator cuff tear. It also accepted a recurrence of disability beginning October 15, 2010 and placed appellant on the periodic compensation rolls effective November 21, 2010. On December 2, 2011 appellant underwent OWCP-approved right shoulder surgery. She continued to receive wage-loss compensation for temporary total disability through December 3, 2012, at which time she returned to work in a full-time, limited-duty capacity.³

On July 29, 2014 appellant filed a claim for compensation (Form CA-7) for intermittent wage loss during the period July 15 through 27, 2014. The employing establishment verified (Form CA-7a) that appellant had accumulated 30.42 hours of leave without pay (LWOP) between July 13 and 25, 2014. She worked an 8-hour shift on July 13, 14, 18, and 25, 2014 and on the other six workdays, appellant's hours worked varied between 1.2 and 5.3 hours per shift.

On August 5, 2014 OWCP wrote to the employing establishment inquiring about the circumstances surrounding appellant's intermittent wage loss during the claimed period. It specifically asked whether the employing establishment had been unable to accommodate appellant's current work restrictions or if she had experienced a new work-related injury.

By letter to appellant dated August 5, 2014, OWCP requested additional factual and medical evidence to establish disability for work from July 15 to 24, 2014, including medical documentation to establish that she either had medical treatment or was unable to work as a result of her work injury for all dates claimed. It afforded appellant 30 days to submit the requested information. Appellant did not submit any additional medical evidence relevant to the claimed period of disability.

By letter dated August 20, 2014, the employing establishment advised that they had been accommodating appellant's work restrictions for eight hours a day since she accepted a modified job offer on December 3, 2012.

By decision dated September 9, 2014, OWCP denied appellant's claim for compensation for wage loss from July 15 to 24, 2014, as the evidence of record failed to establish any disability for work during this period due to the March 25, 2010 work injury.

³ In April 2012, appellant resumed limited-duty work for a brief period until the employing establishment was no longer able to accommodate her work restrictions in May 2012.

Appellant, through counsel, timely requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 14, 2015.

During a September 15, 2014 telephone conversation (Form CA-110) and subsequently through written correspondence dated September 22 and October 5, 2014, appellant advised OWCP that the employing establishment had been sending her home after a few hours of work whenever it felt that it did not have enough work for her. She explained that she was not claiming a new work-related injury. Appellant further stated that she was willing to work 40 hours per her medical restrictions. She reiterated that her claimed wage loss was because the employing establishment did not have work for her.

By decision dated June 2, 2015, an OWCP hearing representative affirmed the September 9, 2014 decision. The hearing representative found that appellant had not submitted evidence sufficient to establish that employing establishment sent her home due to a lack of work within her medical restrictions. Consequently, OWCP denied her claim for intermittent wage loss during the period July 15 through 24, 2014.

On June 1, 2016 counsel requested reconsideration. In support of the request, he submitted several reports from Dr. Muhammad Munir, Board-certified in anesthesiology and pain medicine. Counsel also submitted an April 22, 2016 letter from the Office of Personnel Management (OPM) advising appellant that it had determined that she was disabled from performing her mail handler position due to rotator cuff syndrome and osteoarthritis of the right shoulder.

In a June 29, 2015 report, Dr. Munir advised that appellant should be kept out of work, because any type of activity was aggravating her shoulder pain, secondary to shoulder arthritis and rotator cuff syndrome. He determined that she was incapacitated due to her pain and opined that being away from work had helped her in the past. Dr. Munir further advised that keeping appellant off work for three months might improve her condition.

In a January 5, 2016 report, Dr. Munir advised that appellant should be kept off work, as any activity was aggravating her "left shoulder pain" secondary to her shoulder injury and arthropathy. He related that she was incapacitated due to her pain and reported that these limitations had helped appellant maintain her level of activity in the past. Dr. Munir explained that keeping her out of work for another three months may continue to improve her condition.

In a March 28, 2016 note, Dr. Munir advised that appellant was currently under his care, and he requested that she be excused from work due to incapacity.

In an April 5, 2016 report, Dr. Munir asserted that appellant was incapacitated due to her medical conditions. He asked that she be excused from work for the period April 5 through June 28, 2016.

In a May 23, 2016 report, Dr. Munir related that appellant was experiencing left shoulder pain secondary to rotator cuff syndrome, as well as osteoarthritis of the shoulder. He reported that her pain started at work due to repetitive duties with the employing establishment. Dr. Munir advised that appellant had originally injured her right shoulder and, because of the right shoulder injury and subsequent surgery, she was forced to use her left hand and arm, which

resulted in a left shoulder injury directly related to her employment. He opined that she had tried to return to work, but this aggravated her condition and worsened her pain. Dr. Munir opined that appellant was incapacitated as a result of the injury she received at work. He believed that she had sustained an injury to her left shoulder and as a direct result of her work-related injury.

By decision dated July 22, 2016, OWCP denied appellant's request for reconsideration because it neither raised substantive legal questions nor included relevant and pertinent new evidence sufficient to require OWCP to review its prior decision. It explained that the recent medical evidence from Dr. Munir was irrelevant because it did not address appellant's claimed disability during the period July 15 to 24, 2014.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain 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.⁷ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by OWCP. She previously alleged that her claimed wage loss was because the employing establishment could not fully accommodate her work restrictions. The employing establishment claimed to have been providing appellant full-time limited-duty work since December 3, 2012. On reconsideration counsel did not specifically address that particular basis for the denial of benefits. Rather, he submitted several medical reports from Dr. Munir who indicated that

⁴ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be “received” by OWCP within one year of OWCP’s decision for which review is sought. *Id.* Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *Id.* at Chapter 2.1602.4b

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

appellant had sustained an injury to her left shoulder as a consequence of her employment-related right shoulder injury. Dr. Munir also directed that appellant be kept out of work in June 2015, and again from January through May 2016 due to her left shoulder complaints. He opined that being at work would preclude an aggravation and worsening of appellant's left shoulder condition. However, Dr. Munir did not specifically address whether appellant was capable of working full time during the period July 15 to 24, 2014. The Board has held that the submission of evidence that does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁹ The evidence appellant submitted in connection with her June 1, 2016 reconsideration request is irrelevant to the issue on appeal; *i.e.*, whether she has met her burden of proof to establish disability from work during the period July 15 to 24, 2014 due to her accepted right shoulder condition.¹⁰

The June 1, 2016 reconsideration request failed to show that OWCP erroneously applied or interpreted a specific point of law. Counsel also did not advance a relevant legal argument not previously considered by OWCP. Lastly, the newly submitted evidence was irrelevant to the issue on reconsideration. Accordingly, OWCP did not abuse its discretion in denying appellant's request for a review of the merits of her claim.

CONCLUSION

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

⁹ See *David J. McDonald*, 50 ECAB 185 (1998).

¹⁰ See *Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2016 decision of the Office of Worker's Compensation Programs is affirmed.

Issued: August 29, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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