



## **FACTUAL HISTORY**

On January 6, 2015 appellant, then a 56-year-old carrier (city), filed a claim for traumatic injury (Form CA-1). She indicated that at 10:00 a.m. on January 6, 2015 she sprained her left upper arm. On her Form CA-1, appellant listed the cause of injury as “Tray FSS” (flat sequencing system), but did not otherwise describe how the alleged injury occurred.

By letter dated January 16, 2015, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for FECA benefits. It noted that she had not provided a statement or description as to how her alleged January 6, 2015 injury occurred. OWCP provided appellant a questionnaire to complete regarding the circumstances of her alleged injury. Additionally, it asked her to submit a comprehensive medical report from her treating physician describing her symptoms and a medical opinion explaining the cause of any diagnosed condition. OWCP afforded appellant 30 days to submit the requested evidence. Appellant did not submit any additional factual evidence.

By decision dated February 25, 2015, OWCP denied the claim, finding that appellant had failed to meet her burden of proof to establish fact of injury.

In a January 6, 2015 report, received by OWCP on March 2, 2015, Dr. Christopher A. Morgan, Board-certified in emergency medicine, advised that appellant felt a pop in her left elbow on that date while picking up a mail tub filled with packages. Appellant rated her pain as an eight on a scale of one to ten and reported having numbness in her fingertips. She underwent x-ray tests, the results of which were negative. Dr. Morgan diagnosed a soft tissue injury and restricted appellant from lifting more than five pounds with her left arm.

In a January 7, 2015 report, received by OWCP on May 20, 2015, Dr. Trishanna Sookdeo, a specialist in family medicine, advised that appellant had worked for the employing establishment for 26 years as a letter carrier. Appellant reported that her duties included standing, walking, bending, stooping, lifting, pushing, pulling, reaching, twisting, and turning. Dr. Sookdeo advised that appellant began to notice pain in her left arm, left elbow, left shoulder, and left hand on January 6, 2015. Appellant asserted that the pain resulted from picking up a mail tub weighing approximately 40 pounds. She reported that she heard a pop in her left elbow and immediately began to feel pain, which radiated down to her fingers and hands. Dr. Sookdeo noted that x-rays of appellant’s left elbow were negative and revealed that she had a soft tissue injury. She opined that, based on appellant’s history, physical examination, and job responsibilities that appellant had suffered an occupational injury on January 6, 2015. Dr. Sookdeo diagnosed left elbow sprain and referred appellant to a chiropractor for a physical rehabilitation evaluation.

In a January 16, 2015 report, received by OWCP on May 20, 2015, Dr. Sookdeo noted that appellant’s left elbow condition had partially improved, although she still had complaints of stiffness with bending of her left elbow. She related that appellant felt better to the extent that she was ready to return to a modified job. Dr. Sookdeo recommended that she undergo a nerve conduction velocity study of the left upper extremity in light of her left hand numbness and tingling. She also prescribed continued physical rehabilitation and imposed work restrictions with respect to lifting, pushing, and pulling.

In a February 18, 2015 report, received by OWCP on May 20, 2015, Dr. Sookdeo essentially reiterated her previous findings and conclusions.

In an April 22, 2015 report, received by OWCP on May 20, 2015, Dr. Sookdeo advised that appellant was undergoing chiropractic treatment and physical rehabilitation for her left elbow once a week. She reported having better range of motion with diminished pain. In all other respects, Dr. Sookdeo essentially reiterated her previous findings and conclusions.

Appellant also submitted several duty status (Form CA-17) reports from Dr. Sookdeo, who advised that appellant was experiencing left elbow pain and diagnosed left elbow strain. Additionally, Dr. Sookdeo checked a box marked “yes” on the CA-17s indicating that appellant’s account of the January 6, 2015 work incident was consistent with how the injury occurred.

On February 18, 2016 appellant, through counsel, requested reconsideration.

By decision dated March 28, 2016, OWCP denied appellant’s request for reconsideration as it neither raised substantive legal questions nor included pertinent and relevant new evidence sufficient to require further merit review.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>3</sup> 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 own motion or on application.” 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *Id.* at § 10.607(a). 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). 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.

<sup>6</sup> *Id.* at § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(a), (b).

## ANALYSIS

OWCP denied appellant's January 6, 2015 traumatic injury claim because she failed to provide detailed information of how she had injured her left upper extremity in the performance of duty. The Form CA-1 merely noted "Tray FSS" as the cause of injury. OWCP afforded appellant the opportunity to supplement the record, but she did not respond to the January 16, 2015 questionnaire regarding the circumstances of her alleged injury. Consequently, it denied the claim on February 25, 2015 because of appellant's failure to establish the factual component of fact of injury.<sup>8</sup> Counsel timely requested reconsideration on February 18, 2016. However, he neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, counsel did not advance any relevant legal arguments not previously considered by OWCP. Thus, the Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>9</sup>

Counsel also failed to submit any relevant and pertinent new evidence with the February 18, 2016 request for reconsideration. As noted, the issue on reconsideration was whether appellant established the factual component of fact of injury. Appellant had not previously explained what she was doing with an FSS tray when she allegedly injured her left upper extremity on January 6, 2015. OWCP received additional medical evidence since it initially denied appellant's claim on February 25, 2016. However, neither appellant nor counsel submitted a statement from appellant or any witnesses regarding the circumstance of the alleged January 6, 2015 employment incident.

The Board has held that the submission of evidence that does not address the particular issue in the case does not constitute a basis for reopening the claim.<sup>10</sup> Although the recently submitted medical evidence indicates that appellant injured her left elbow lifting a tub of mail, to date appellant has failed to provide a factual history of injury. Because appellant did not provide any "relevant and pertinent new evidence," she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>11</sup> Accordingly, OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

## CONCLUSION

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

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<sup>8</sup> To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury. *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3)(i) and (ii).

<sup>10</sup> See *David J. McDonald*, 50 ECAB 185 (1998).

<sup>11</sup> 20 C.F.R. § 10.606(b)(3)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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