



## ISSUE

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

## FACTUAL HISTORY

On July 6, 2015 appellant, then a 58-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that he was injured in a May 16, 2015 motor vehicle accident (MVA). He explained that while driving on the employing establishment premises, police sport utility vehicle (SUV) struck the right side of the truck he was operating. The force of the collision reportedly turned appellant's vehicle sideways, causing damage to the rear axle and transmission drivetrain. He claimed to have been bounced around like a ping-pong ball inside the truck's cabin. On the Form CA-1, appellant reported injuries to his neck, upper and lower back, right shoulder, right wrist, left thumb, and both feet.

In a May 16, 2015 accident report, the employing establishment's police officer acknowledged that he struck the passenger side, tail end of appellant's truck at approximately 6:55 a.m.<sup>4</sup> The police SUV was traveling at approximately 5 miles per hour when it collided with appellant's vehicle. The officer's view was reportedly obstructed by overgrown bushes at the intersection where the collision occurred. Both appellant and the employing establishment's police officer were reportedly uninjured at the time of the MVA and refused any medical treatment.

The medical evidence submitted with the claim regarding appellant's medical condition included May 18, 28, and June 25, 2015 reports from Dr. Elisabeth Brown, a Board-certified family practitioner. In her May 18, 2015 report, Dr. Brown noted that appellant had been seen in the office that day and he required a medical leave of absence for the period May 16 through 31, 2015. She advised that appellant could return to work without restrictions effective June 1, 2015.

Dr. Brown's May 28, 2015 follow-up report indicated that appellant had been seen that day and he required a medical leave of absence from May 18 through June 29, 2015. She further indicated that appellant could return to regular work without restrictions on June 29, 2015.

On June 25, 2015 Dr. Brown indicated that appellant could return to modified work on June 29, 2015 with limitations of no reaching, as this caused his neck and bilateral shoulder pain to worsen and no lifting, pushing, pulling, climbing, and twisting.

On June 25, 2015 Dr. Haig Minassian, a Board-certified neurosurgeon, released appellant to resume work effective June 29, 2015 with restrictions of no overhead work and no power tools.

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<sup>4</sup> Appellant was on his way to work at the time of the collision. His regular tour of duty was 7:00 a.m. until 3:30 p.m., Monday through Friday.

In a June 29, 2015 report, Dr. David Webb, a Board-certified occupational medicine specialist, advised that appellant was capable of working restricted duty until July 7, 2015. His restrictions included no lifting, pushing, pulling, no reaching above shoulder -- bilaterally, no overhead work, and no power tools.

On July 7, 2015 OWCP advised appellant of the need for additional factual and medical evidence to support his claim for compensation benefits. It noted that the previously submitted medical evidence was insufficient because there was no diagnosis of any condition resulting from the claimed injury. It afforded appellant at least 30 days to submit the requested information.

In a July 20, 2015 statement, in response to OWCP's development letter, appellant noted, among other things, that he had a preexisting degenerative disc in his neck. He provided no additional medical evidence within the allotted time frame.

By decision dated August 17, 2015, OWCP accepted that the May 16, 2015 employment incident occurred as alleged, but denied the claim finding that appellant had not submitted evidence containing a medical diagnosis in connection with the accepted employment incident.

On January 26, 2016 appellant requested reconsideration and submitted a statement reiterating the factual history of the claim. He also submitted page two of OWCP's prior development letter, which included handwritten notations referencing a magnetic resonance imaging (MRI) scan and a diagnosis of multilevel cervical degenerative disc disease with left upper extremity radiculopathy.

In a February 1, 2016 decision, OWCP denied appellant's timely request for reconsideration. It found, however, that the author of the handwritten note was unclear, and thus, the information provided could not be construed as medical evidence from a physician.

On March 7, 2016 appellant again requested reconsideration. He resubmitted a prior factual statement regarding the MVA where he was T-boned by an employing establishment police officer. Appellant also resubmitted the previously unidentifiable handwritten notations regarding cervical degenerative disc disease. Additionally, he submitted MRI scans of the cervical spine and right shoulder. A May 26, 2015 cervical MRI scan revealed multilevel degenerative changes with significant neuroforaminal narrowing at C4-5 and C5-6. Appellant's July 31, 2015 right shoulder MRI scan demonstrated tendinosis and mild-to-moderate glenohumeral osteoarthritis.

By decision dated June 1, 2016, OWCP denied appellant's timely request for reconsideration. It indicated that it had previously considered the handwritten notes. Additionally, OWCP noted that the recently submitted MRI scans were taken after the May 16, 2015 employment-related MVA and did not contain a physician's opinion attributing the respective diagnoses to the accident. Lastly, it noted that there was no other evidence of record establishing that appellant sustained an injury either caused or aggravated by the May 16, 2015 employment-related MVA.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>5</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>6</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>7</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>8</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>9</sup>

## ANALYSIS

In its August 17, 2015 merit decision, OWCP accepted that the May 16, 2015 employment incident occurred as alleged, but it denied appellant's claim because he failed to submit medical evidence that included a diagnosis in connection with the May 16, 2015 employment incident. Appellant requested reconsideration of the August 17, 2015 merit decision on January 26, 2016. This request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to further review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>10</sup>

Appellant also failed to submit any relevant and pertinent new evidence with his January 26, 2016 request for reconsideration. OWCP had already accepted that the May 16, 2015 employment incident occurred as alleged. Therefore, appellant's additional statement regarding the May 16, 2015 employment-related MVA was not relevant to the medical issue on reconsideration, which was whether there was an appropriate medical diagnosis in connection with the accepted employment incident. The handwritten notations on page two of OWCP's

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<sup>5</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>6</sup> 20 C.F.R. § 10.607.

<sup>7</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 the OWCP 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>8</sup> 20 C.F.R. § 10.606(b)(3).

<sup>9</sup> *Id.* at § 10.608(a), (b).

<sup>10</sup> *Id.* at § 10.606(b)(3)(i) and (ii).

July 2015 development letter do not constitute medical evidence from a physician as it is unclear who authored the reported diagnosis of cervical spine degenerative disc disease. A medical report should bear the physician's signature or signature stamp.<sup>11</sup> OWCP may require an original signature on the report.<sup>12</sup> Because appellant failed to provide any relevant and pertinent new evidence with his January 26, 2016 reconsideration request, he was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>13</sup> OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a). Accordingly, the Board shall affirm the February 1, 2016 nonmerit decision.

Appellant filed another request for reconsideration on March 7, 2016. This request was also timely with respect to the August 17, 2015 merit decision, but again appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. He also did not advance a relevant legal argument not previously considered by OWCP. Consequently, the March 7, 2017 request for reconsideration does not justify further merit review under section 10.606(b)(3)(i) and (ii).

Appellant also failed to submit any relevant and pertinent new evidence with his March 7, 2016 request for reconsideration. As noted, the issue on reconsideration was whether there was an appropriate medical diagnosis in connection with the May 16, 2015 employment-related MVA. Appellant resubmitted his statement regarding the accepted MVA, as well as another copy of the handwritten notations on the claim development letter. For reasons previously discussed, this information is insufficient to warrant reopening the claim for further merit review. Moreover, providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>14</sup>

With respect to the newly submitted cervical and right shoulder MRI scans, this evidence is similarly insufficient to warrant further merit review. Although new to the record, the diagnostic studies do not address a relationship between the May 16, 2015 employment incident and the diagnosed right shoulder and/or cervical conditions. The Board has held that submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>15</sup> In this instance, the radiologist reports of the May 26 and July 31, 2015 MRI scans did not address the cause(s) of the identified conditions. Consequently, the newly submitted diagnostic studies are insufficient to warrant reopening the case for further merit review under section 10.606(b)(3)(iii). OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a). The Board shall similarly affirm the June 1, 2016 nonmerit decision.

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<sup>11</sup> *Id.* at § 10.331(a).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at § 10.606(b)(3)(iii).

<sup>14</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

<sup>15</sup> *See M.D.*, Docket No. 16-0745 (issued February 8, 2017); *see also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's requests for merit review of the claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1 and February 1, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 28, 2017  
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