

ISSUE

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

On appeal counsel asserts that the medical evidence is uncontradicted and establishes that appellant's claim should be expanded to include a neck/cervical condition.

FACTUAL HISTORY

On February 5, 2013 appellant, then a 50-year-old supervisor of customer services, filed a traumatic injury claim (Form CA-1) alleging that he was injured when a mail truck that was in neutral hit a tree and, as he jumped into the driver's seat to stop it, the steering wheel hit his stomach.³ He did not stop work. OWCP accepted abdominal abrasion and contusion of abdominal wall.

In April 2013, appellant requested that treatment for a cervical condition be authorized. By letter dated July 23, 2013, OWCP noted that his medical history included a preexisting neck condition. It asked that appellant provide records of all prior medical treatment to the neck.

By decision dated October 3, 2013, OWCP denied appellant's request to expand acceptance of the claim to include a neck/cervical condition. It found the medical evidence then of record insufficient to establish that the claimed condition was caused by the February 5, 2013 employment injury.

On November 1, 2013 appellant timely requested a hearing before an OWCP hearing representative. A telephone hearing was held on May 14, 2014. By decision dated July 30, 2014, OWCP's hearing representative affirmed the October 3, 2013 decision.

On October 21, 2014 appellant requested reconsideration. In a merit decision dated December 30, 2014, OWCP denied modification of its prior decision.

Appellant, through counsel, again requested reconsideration on December 3, 2015.

By decision dated January 13, 2016, OWCP denied modification of its prior decision, finding that the medical evidence then of record was insufficient to establish causal relationship. It reviewed all medical evidence submitted including August 18, 2012 and March 14, 2013 cervical spine x-rays that demonstrated degenerative spurring and disc space narrowing, a June 6, 2014 cervical magnetic resonance imaging study demonstrating spondylosis, and an August 28, 2014 bilateral upper extremity electrodiagnostic study demonstrating bilateral carpal tunnel syndrome. Appellant's attending Board-certified orthopedic surgeon, Dr. Russell S. Brummetti, advised in reports dated February 12 and December 8, 2015 that appellant reported that he had no neck pain before the employment injury and opined that the employment injury caused cervical disc herniations.

³ Appellant was sitting in the back of the truck supervising a trainee who had exited the vehicle.

Appellant, through counsel, again requested reconsideration on January 12, 2017. Counsel asserted that the medical evidence submitted was uncontradicted, unequivocal, and well rationalized, and was, therefore, sufficient to establish causal relationship between the work injury and appellant's cervical symptoms. No additional medical evidence was submitted.

By decision dated January 18, 2017, OWCP denied appellant's January 12, 2017 request for reconsideration of the merits of his claim. It found that counsel's argument regarding the medical evidence was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

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

With the January 12, 2017 reconsideration request, counsel asserted that the medical evidence of record was uncontradicted, unequivocal, and well rationalized and was, therefore, sufficient to establish a causal relationship between the work injury and appellant's cervical symptoms. The underlying issue in this case is whether his accepted conditions caused by a February 5, 2013 employment injury should include a cervical/neck condition. As the issue is medical in nature, it can only be resolved through the submission of medical evidence.⁷ Counsel's

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b).

⁷ *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

argument did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his reconsideration request. No additional evidence was received prior to the January 18, 2017 nonmerit decision.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence, OWCP properly denied his reconsideration request.⁸

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2018
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

⁸ M.A., Docket No. 16-1846 (issued October 20, 2017).