



## **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).

## **FACTUAL HISTORY**

On February 5, 2017 appellant, then a 34-year-old snow ranger, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2017 he injured his left shoulder while up-righting his snowmobile while in the performance of his federal employment duties. The employing establishment did not controvert the claim. No evidence was submitted with the claim.

By development letter dated March 9, 2017, OWCP requested that appellant submit additional factual and medical information in support of his claim. It advised him to submit a narrative medical report, which provided a diagnosis of his condition and rationale explaining the cause of the diagnosed condition. Appellant was also asked to complete a questionnaire soliciting additional factual information. OWCP afforded him 30 days to submit the necessary evidence.

Appellant submitted the completed development questionnaire on March 24, 2017.

OWCP also received a report from Dr. Michael S. Sisk, a Board-certified orthopedic surgeon, dated March 7, 2017. In his March 7, 2017 report, Dr. Sisk indicated that appellant, a firefighter, presented with chronic issues regarding his left shoulder with no specific recent injury to the shoulder. He provided an assessment of acromioclavicular (AC) joint arthritis and possible rotator cuff disease of unknown extent. Dr. Sisk recommended a magnetic resonance imaging (MRI) scan due to the chronicity and failure to improve with activity modification and nonsteroids.

By decision dated April 10, 2017, OWCP found that the employment incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish causal relationship. It found that Dr. Sisk did not provide sufficient rationale as to how appellant's diagnosed conditions were caused or aggravated by the accepted employment incident.

Appellant requested reconsideration on May 2, 2017. In an April 14, 2017 report, Dr. Sisk concluded that the MRI scan demonstrated AC arthritis with bursitis and impingement on the cuff with no cuff tear or biceps or labral disease. He recommended a Mumford procedure.

By decision dated June 23, 2017, OWCP declined to reopen appellant's claim for further consideration of the merits. It found that Dr. Sisk's April 14, 2017 report was substantially similar to evidence already in the case record and previously considered.

## **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

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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).

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>

### ANALYSIS

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).

The underlying issue on reconsideration is medical in nature, whether the medical evidence establishes causal relationship between appellant's diagnosed left shoulder condition and the established employment incident.

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.<sup>8</sup> Thus, he 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).<sup>9</sup>

The Board further finds that appellant did not submit on reconsideration relevant or pertinent new evidence not previously considered by OWCP. Dr. Sisk's April 14, 2017 report provided diagnoses pertaining to appellant's left shoulder condition, but did not provide an opinion regarding the underlying issue of causal relationship. As Dr. Sisk had previously provided diagnoses in his March 7, 2017 report, this evidence was substantially similar to the evidence of record. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case under section 10.606(b)(3).<sup>10</sup> The Board,

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<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> 20 C.F.R. § 10.606(b)(3).

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

<sup>8</sup> *C.H.*, Docket No. 17-0074 (issued March 17, 2017).

<sup>9</sup> *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

<sup>10</sup> *Id.*; *James W. Scott*, 55 ECAB 606 (2004).

therefore, finds that the April 14, 2017 report from Dr. Sisk is insufficient to warrant further merit review of the claim.

As appellant's request for reconsideration did not meet any of the three requirements enumerated under section 10.606(b)(3), the Board finds that OWCP properly denied the request for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

On appeal appellant expressed his frustration with OWCP's system and indicated that his claim was factually established. As previously noted, the Board does not have jurisdiction over the merits of the claim.

### **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).

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<sup>11</sup> See *R.C.*, Docket No. 17-0595 (issued September 7, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2018  
Washington, DC

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

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

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