



## ISSUE

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

## FACTUAL HISTORY

On April 8, 2015 appellant, then a 35-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that while in the performance of duty on April 1, 2015 she injured her right lower back in a motor vehicle accident.<sup>3</sup> She stopped work on that day. OWCP accepted the claim for neck sprain, lumbar sprain, bilateral knee contusions, disorders of the bursae and tendons of the right shoulder, and derangement of the lateral meniscus of the right knee. It paid appellant wage-loss compensation for total disability from May 18, 2015 to June 25, 2016 and for intermittent periods of disability until March 30, 2017, when it again paid her wage-loss compensation for total disability.

By decision dated November 17, 2017, OWCP terminated appellant's wage-loss compensation and authorization for medical benefits effective November 18, 2017 as she had no further disability or need for medical treatment due to her April 1, 2015 employment injury. It found that the opinion of Dr. Raju Vanapalli, an orthopedic surgeon and OWCP's referral physician, constituted the weight of the evidence and established that the accepted conditions had resolved. OWCP noted that the reports from appellant's attending physician, Dr. Jay B. Bender, a Board-certified physiatrist, were repetitive and lacked medical rationale.

By separate decision dated November 17, 2017, OWCP suspended appellant's wage-loss compensation effective December 10, 2017, as she had not submitted an affidavit of earnings and employment on a Form CA-1032 as requested.<sup>4</sup>

Subsequent to OWCP's decisions, appellant submitted physical therapy reports dated March and April 2017 and November 21, 2017. She also submitted a September 26, 2017 report from Dr. Bender. In that report Dr. Bender diagnosed right shoulder bursitis, cervical sprain, lumbar sprain, and a lumbar herniated nucleus. He noted that appellant had sustained an injury to her neck, right shoulder, right lower extremity, and back in an employment-related motor vehicle accident. Dr. Bender opined that she was totally disabled pending re-evaluation.

Appellant, on January 2, 2018, requested reconsideration.

By decision dated January 23, 2018, OWCP denied appellant's request for reconsideration as she had not raised an argument or submitted evidence sufficient to warrant reopening her case

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<sup>3</sup> By decision dated July 15, 2015, OWCP denied appellant's request for authorization for various medical supplies. By decision dated October 27, 2016, it denied her request for wage-loss compensation for lost time from work on June 30 and July 15, 2016, and by decision dated February 27, 2017, it denied her request for four hours of wage-loss compensation on December 2, 2016.

<sup>4</sup> On November 29, 2017 OWCP received appellant's completed CA-1032 form.

for further merit review under section 8128(a). It found that Dr. Bender's report was substantially similar to those previously submitted and considered.<sup>5</sup>

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>6</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>8</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>9</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>10</sup>

### **ANALYSIS**

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

By decision dated November 17, 2017, OWCP terminated appellant's wage-loss compensation and authorization for medical benefits. On January 2, 2018 appellant requested

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<sup>5</sup> In reports received by OWCP in July and August 2017, Dr. Bender listed the accepted conditions as cervical and lumbar sprain, contusions of the right and left knee, and right shoulder bursitis. He also diagnosed additional conditions as due to the work injury. Dr. Bender opined that appellant was unable to work.

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(3); *see also* S.S., Docket No. 18-0647 (issued October 15, 2018).

<sup>8</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>9</sup> *Id.* at § 10.608(a); *see also* M.S., Docket No. 18-1041 (issued October 25, 2018).

<sup>10</sup> *Id.* at § 10.608(b); K.S., Docket No. 18-1022 (issued October 24, 2018).

reconsideration. Appellant's request was timely filed as it was received within one year of OWCP's last merit decision.<sup>11</sup>

The issue is whether appellant submitted evidence or raised an argument in support of her request for reconsideration sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(3). The Board finds that she did not show that OWCP erroneously applied or interpreted a specific point of law or raise a relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>12</sup>

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. She submitted physical therapy reports dated March, April, and November 2017. The underlying issue, however, is whether appellant has further disability causally related to her accepted April 1, 2015 employment injury. The physical therapy notes do not address the question of disability and thus are not pertinent to the issue at hand.<sup>13</sup> Evidence or argument that does not address the particular issue involved does not warrant reopening a case for further merit review.<sup>14</sup>

On September 26, 2017 Dr. Bender reexamined her and diagnosed right shoulder bursitis, cervical sprain, lumbar sprain, and a lumbar herniated nucleus. He attributed the conditions to appellant's work injury and indicated that she was currently disabled from employment until further evaluation. Dr. Bender's report, however, was substantially similar to his prior reports previously of record, and thus does not constitute relevant and pertinent new evidence.<sup>15</sup> Appellant, consequently, is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(3).<sup>16</sup>

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>17</sup>

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<sup>11</sup> See *supra* note 8.

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(i) and (ii); see also *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>13</sup> See *R.B.*, Docket No. 16-0168 (issued February 8, 2016).

<sup>14</sup> See *T.Q.*, Docket No. 18-0641 (issued October 5, 2018).

<sup>15</sup> See *V.P.*, Docket No. 18-0440 (issued August 24, 2018) (newly submitted evidence which is repetitive or duplicative of evidence existing in the record is insufficient to warrant further merit review).

<sup>16</sup> 20 C.F.R. § 10.606(b)(3)(iii); see also *A.F.*, Docket No. 18-0295 (issued July 18, 2018).

<sup>17</sup> See *R.C.*, Docket No. 17-1314 (issued November 3, 2017) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2018  
Washington, DC

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

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

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