

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 April 26, 2017 appellant, then a 57-year-old cook leader, filed a traumatic injury claim (Form CA-1) for a torn (left) rotator cuff that allegedly occurred at work on March 27, 2017 while "pulling chair out from a table to sit down." He stopped work on March 27, 2017 and resumed work on March 29, 2017. On the claim form appellant's supervisor, C.H., did not challenge the claim and noted that appellant was injured in the performance of duty by placing a check in a box marked "yes." The claim form was not accompanied by additional factual information or any medical evidence.

On April 27, 2017 an employing establishment injury compensation specialist challenged appellant's entitlement to continuation of pay. She also argued that the current record did not establish fact of injury (medical component) or causal relationship.

By development letter dated May 1, 2017, OWCP requested that appellant respond to an attached questionnaire and submit medical evidence in order to establish his claim. Appellant was afforded 30 days to submit the requested information.

In a May 12, 2017 statement, appellant described the claimed March 27, 2017 incident at work, the pain and symptoms he experienced, and the medical treatment he received. He also indicated that he had prior surgery on April 4, 2016 that consisted of total shoulder reconstruction.

In an April 19, 2017 narrative report, Dr. George M. McCluskey III, a Board-certified orthopedic surgeon, related that appellant pulled a chair out from a table with his left arm to sit down and felt a pop in his left shoulder. He reviewed appellant's history and provided physical examination findings. Dr. McCluskey diagnosed rotator cuff tear and recommended surgery. He provided a work status report, which recommended no work.

On May 16, 2017 Dr. McCluskey performed a left shoulder open rotator cuff repair, subscapularis. The post- and preoperative diagnoses were left shoulder traumatic rotator tear and status post April 4, 2016 total shoulder replacement for osteoarthritis.

OWCP received several medical reports by Dr. McCluskey, which predated the claimed March 27, 2017 employment injury. In a June 17, 2015 narrative report, Dr. McCluskey described appellant's history of left shoulder pain, provided examination findings, and diagnosed left shoulder pain and osteoarthritis. The April 4, 2016 operative report was also provided. In narrative reports dated April 11 and June 15, 2016, Dr. McCluskey noted that appellant underwent left total shoulder replacement surgery on April 4, 2016. In a September 20, 2016 status report form, he indicated that appellant had been under his care since June 17, 2016.

By decision dated June 9, 2017, OWCP denied appellant's claim because the evidence of record was insufficient to establish fact of injury. It found that he did not submit sufficient factual evidence to substantiate that the March 27, 2017 employment incident occurred as alleged. OWCP

also determined that the medical evidence submitted failed to establish a diagnosis in connection with the alleged March 27, 2017 incident.

On July 3, 2017 appellant requested reconsideration. No other evidence was submitted with his request.

By decision dated July 21, 2017, OWCP denied further merit review of appellant's claim under 5 U.S.C. § 8128(a). It found that appellant's reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of her claim.

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 compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁴

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.⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration as he did not submit any evidence with his reconsideration request to warrant merit review under 5 U.S.C. § 8128(a).

OWCP did not receive any additional evidence with appellant's July 3, 2017 reconsideration request. Accordingly, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered by OWCP or submitted relevant and pertinent

³ *Id.* at § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 CFR § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

new evidence not previously considered by OWCP. The Board finds, therefore, that appellant has not met any of the regulatory requirements and OWCP properly declined his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).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 July 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 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

⁸ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).