

ISSUE

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

FACTUAL HISTORY

On March 23, 2015 appellant, then a 49-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that, on March 18, 2015, he sustained left shoulder, hand, and arm injuries when he slipped in a washroom stall. He stopped work on March 18, 2015 and returned on March 23, 2015.

Accompanying appellant's claim was an unsigned March 18, 2015 emergency room note indicating that appellant was evaluated and treated for left upper arm pain that day. Based on a physical examination, appellant was diagnosed with a muscle strain.

On August 6, 2015 appellant filed a claim for intermittent wage-loss compensation (Form CA-7) for the period June 1 to 12, 2015.

By development letter dated August 10, 2015, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as his claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and his claim had been reopened for consideration of the merits because a claim for wage loss had been filed. OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. OWCP advised appellant of the type of medical and factual evidence needed and afforded him 30 days to submit the additional evidence.

In response to OWCP's request, appellant submitted additional factual and medical evidence.

A March 23, 2015 progress note by Else Takle, a registered nurse noted that appellant was seen for complaints of left arm and bicep pain.

In an April 17, 2015 report, Dr. Kenneth Edwards, a treating Board-certified orthopedic surgeon, diagnosed shoulder impingement syndrome, which included acute supraspinatus tendinitis and chronic left bicep long head rupture. Appellant had related that he had left shoulder pain since he fell while on business travel. A physical examination revealed restricted left shoulder range of motion due to pain.

By decision dated September 15, 2015, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish causal relationship between the diagnosed condition and the accepted March 18, 2015 incident.

On October 20, 2015 appellant requested reconsideration. In support of his claim, he submitted medical evidence relevant to a left shoulder condition.

A March 18, 2015 emergency room progress note with discharge instructions signed by Dr. Lawrence Enweze, an orthopedic surgeon, diagnosed left upper extremity muscle strain. Appellant also submitted medical evidence from Dr. James Gendernalik, a treating osteopath, and Dr. Daniel Stephens, a Board-certified general surgeon, concerning his hernia condition.

In emergency room progress notes dated March 23, 2015, Dr. Richard Max, an examining physician, noted that appellant was seen for left shoulder pain.

In emergency room progress notes signed on March 23, 2015, Dr. Esteban A. Marquez, an examining Board-certified internist, reported that appellant was seen for discomfort following a fall on March 18, 2015. Diagnoses included left shoulder pain.

In an October 19, 2015 report, Dr. Edwards detailed appellant's history of injury, as well as his past medical treatment. He noted appellant's examination findings, which included improved left upper extremity range of motion. Dr. Edwards expressed concern that appellant may have a possible rotator cuff tear.

An October 25, 2015 magnetic resonance imaging (MRI) scan revealed left rotator cuff sprain.

By decision dated February 4, 2016, OWCP denied modification of its prior decision. It found that appellant failed to submit a rationalized medical opinion explaining how the diagnosed condition was causally related to the accepted March 18, 2015 incident.

On February 24, 2016 appellant requested reconsideration and submitted additional evidence.

In a February 10, 2016 report, Dr. Michael Drewno, a treating Board-certified internist, opined that appellant's shoulder impingement syndrome, chronic bicep long head rupture, and inguinal hernia had been caused or aggravated by the March 18, 2015 fall at work.

By decision dated May 27, 2016, OWCP denied modification of its prior decision. It found that appellant failed to submit a rationalized medical opinion explaining how or why the accepted March 18, 2015 incident caused or aggravated the diagnosed conditions.

On September 27, 2016 appellant requested reconsideration and submitted additional evidence.

In a September 26, 2016 report, Dr. Edwards diagnosed left shoulder impingement syndrome. Examination findings and history of injury were detailed. A review of an x-ray interpretation showed no evidence of left shoulder fracture or dislocation. Dr. Edwards also reviewed a left shoulder MRI scan, which showed a left bicep tendon rupture and acromioclavicular degenerative joint disease.

By decision dated October 27, 2016, OWCP denied modification of its prior decision, finding that appellant had failed to submit rationalized medical opinion evidence explaining how the diagnosed conditions were caused or aggravated by the accepted March 18, 2015 work injury.

On September 22, 2017 appellant, through counsel, requested reconsideration. In support of his request, appellant resubmitted Dr. Drewno's February 10, 2016 report.

By decision dated September 29, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP.⁷

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether appellant submitted rationalized medical evidence establishing causal relationship between the diagnosed left shoulder condition and the accepted March 18, 2015 employment incident. In support of his request for reconsideration, appellant resubmitted a February 10, 2016 report by Dr. Drewno already of record. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.⁸

³*Supra* note 1. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁴ 20 C.F.R. § 10.606(b)(3). *See J.M.*, Docket No. 09-0218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ *Id.* at 10.607(a).

⁶ *Id.* at § 10.608(b). *See Y.S.*, Docket No. 08-0440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁷ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

⁸ *See D.G.*, Docket No. 17-1251 (issued October 23, 2017); *Denis M. Dupor*, 51 ECAB 482 (2000).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit pertinent new and relevant evidence not previously considered. The Board accordingly finds that he has not met the requirements of 20 C.F.R. § 10.606(b)(3). Accordingly, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.⁹

On appeal counsel provides several arguments regarding the merits of the case. The arguments include that there is an unresolved conflict in the medical opinion evidence that OWCP failed to properly adjudicate the claim with respect to the standard of causation, and that OWCP failed to give deference to the treating physician's opinion. In addition, counsel requests that the Board address the deficiency in the medical opinion evidence found to have insufficient rationale. As noted above, the Board lacks jurisdiction to review the merits of the present appeal.

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 September 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 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

⁹ See *D.G., id.*