

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 18, 2013 appellant, then a 50-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that a September 27, 2013 preemployment vaccination caused right upper extremity (arm) muscle and nerve damage.⁴ OWCP initially denied the claim because the medical evidence then of record did not include a diagnosis in connection with the accepted employment incident. It subsequently denied reconsideration on January 7, 2014. By decision dated December 12, 2014, OWCP denied modification of its initial December 2, 2013 merit decision. It again denied reconsideration on January 15, 2015. Appellant appealed to the Board. The Board affirmed the December 12, 2014 merit decision as well as the January 15, 2015 nonmerit decision.⁵

On April 13, 2016 appellant again requested reconsideration. He noted that the vaccination(s) permanently damaged his right arm and that OWCP repeatedly denied his claim despite having submitted substantial medical evidence. Appellant included a copy of a one-page judgement issued in his favor against the Department of Health and Human Services. The December 1, 2015 judgment issued by the U.S. Court of Federal Claims (No. 14-774 V) was pursuant to "Vaccine Rule 11(a)."

By decision dated May 24, 2016, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ 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.⁸ A timely application for reconsideration, including all supporting documents, must set

³ Docket No. 15-0827 (issued August 7, 2015).

⁴ Appellant had recently accepted a new job, and the preemployment vaccination was administered at an Army occupational health center.

⁵ See *supra* note 3.

⁶ 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).

⁷ 20 C.F.R. § 10.607.

⁸ *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.

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.⁹ 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.¹⁰

ANALYSIS

On April 13, 2016 appellant filed a timely request for reconsideration.¹¹ He contended that his traumatic injury claim was improperly denied as the medical evidence of record did not include a firm diagnosis in connection with the September 27, 2013 employment incident. Appellant's April 13, 2016 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance any relevant legal arguments not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).¹²

The Board further finds that appellant also failed to submit any relevant and pertinent new evidence with his April 13, 2016 request for reconsideration. The issue on reconsideration is whether the medical evidence of record establishes a diagnosis in connection with the accepted employment incident. However, appellant did not submit any medical evidence with his latest request for reconsideration. Although the December 1, 2015 U.S. Court of Federal Claims judgment found in favor of appellant it does not contain factual evidence relative to a medical diagnosis. Because appellant did not provide any relevant and pertinent new evidence in support of his reconsideration request he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹³ Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a). The Board affirms OWCP's May 24, 2016 nonmerit decision.

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).

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(a), (b).

¹¹ Although OWCP's last merit decision was dated December 12, 2014, the 1-year period for filing a timely request for reconsideration accompanies any subsequent merit decision, including any merit decision issued by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (February 2016).

¹² 20 C.F.R. § 10.606(b)(3)(i) and (ii).

¹³ *Id.* at § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 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