

FACTUAL HISTORY

On August 8, 2015 appellant, then a 39-year-old officer, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2015 he was participating in drills, acting as a suspect with his hands placed on the wall, when he was placed in an arm bar and forced to the ground in a twisting motion. He alleged that he sustained dislocation of lumbar vertebra, lumbar intervertebral disc without myelopathy, and other injuries of his lower back and spine. Appellant did not stop work.

In a development letter dated August 19, 2015, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It afforded him 30 days to respond.

Appellant provided a note dated August 20, 2015 from Dr. David T. Mitchell, a chiropractor, noting acute back pain on July 25, 2015. Dr. Mitchell diagnosed subluxation complex of L5 on S1 and lumbar intervertebral disc without myopathy. He completed a form report on September 11, 2015 and noted that appellant was thrown to the ground with rotation during defensive tactics training. Dr. Mitchell diagnosed anterior longitudinal damage to L4-S1 and posterior longitudinal ligament L5-S1. He indicated by checking the box marked "yes" that appellant's condition was caused or aggravated by his employment activity. Dr. Mitchell indicated that he provided chiropractic adjustment and recommended a magnetic resonance imaging scan of appellant's lumbar spine to rule out disc pathology.

By decision dated September 29, 2015, OWCP denied appellant's traumatic injury claim finding that he failed to provide medical evidence to establish fact of injury. It explained the requirements for a chiropractor's report to constitute medical evidence and noted that Dr. Mitchell had not indicated that his diagnosis of spinal subluxation was based on x-ray examination findings.²

Appellant requested reconsideration on June 2, 2016 and submitted additional medical evidence. In a report dated October 14, 2015, Dr. Mitchell provided a history of injury, noting that on July 23, 2015 appellant participated in defensive tactics training and felt acute pain in the low back on the left side which radiated into his left knee. He indicated that he followed up with radiology and diagnosed subluxations at L5 and S1.

By decision dated December 2, 2016, OWCP reviewed the merits of appellant's claim and denied modification of the September 29, 2015 decision. It informed him that a chiropractor was considered a physician for the purposes of FECA only to the extent that he diagnosed a subluxation

² Chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); consequently, their medical findings and/or opinions which are not based on x-rays will not suffice for purposes of establishing entitlement to FECA benefits. *A.L.*, Docket No. 18-0420 (issued August 21, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

of the spine as demonstrated by x-ray to exist. OWCP noted that Dr. Mitchell had diagnosed subluxations of the spine, but had not provided an x-ray report supporting his diagnosis.³

By appeal request form, received by OWCP on November 20, 2017, appellant requested reconsideration.

By decision dated December 4, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim as he did not provide relevant and pertinent new evidence or new argument in support of his request for reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that the evidence or argument submitted by 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for review without reopening the case for a review on the merits.⁷

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 provide any evidence or argument in support of his November 20, 2017 request for reconsideration. He 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. Thus, appellant is not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b)(3).⁸

³ OWCP's regulations provide that a chiropractor may interpret his or her x-rays to the same extent as any other physician. However, to be given any weight, the medical report must note that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submission of the x-ray, or a report of the x-ray, but the report must be available on request. 20 C.F.R. § 10.311(c); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3.a(3) (January 2013).

⁴ 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *Supra* note 5; *M.A.*, Docket No. 18-0395 (issued July 17, 2018).

The Board also finds that appellant did not submit relevant and pertinent new evidence in support of his reconsideration request. The underlying issue in this case is whether appellant has established a diagnosed medical condition arising from his accepted July 23, 2015 employment incident. Because he did not provide OWCP with any relevant and pertinent new evidence, appellant is also not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).⁹

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 December 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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

⁹ 20 C.F.R. § 10.606(b)(3)(iii).