



## **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 July 12, 2017 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on June 27, 2017, he yanked his right shoulder to avoid a wasp that flew out of a mailbox. He stopped work on June 28, 2017 and returned on July 3, 2017.

In support of his claim, appellant submitted a July 30, 2017 physical therapy referral form and a June 30, 2017 patient status report form with diagnoses of right rotator cuff tendinitis and shoulder impingement. He also submitted a supplemental statement dated July 12, 2017 describing the incident.

By letter dated July 27, 2017, the employing establishment controverted the claim. It contended that the case record lacked factual evidence sufficient to establish that the incident occurred as alleged and lacked medical evidence sufficient to establish causal relationship between the alleged incident and appellant's claimed medical condition.

By development letter dated July 31, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence required to establish his claim. OWCP afforded appellant 30 days to submit the requested information.

By decision dated September 7, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the June 27, 2017 employment incident occurred as alleged.

On November 27, 2017 appellant requested reconsideration.

By decision dated November 29, 2017, OWCP denied appellant's request for reconsideration as he had not raised any substantive legal question or submitted any new and relevant evidence with his request.

## **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.<sup>3</sup>

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

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<sup>3</sup> 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</sup>

### **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 filed a timely request for reconsideration. However, 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 by OWCP. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With regard to the third requirement, OWCP did not receive additional evidence with appellant's form requesting reconsideration. Accordingly, the Board finds that appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP.

The Board finds, therefore, that appellant has not met any of the regulatory requirements under section 10.606(b)(3) and OWCP properly declined his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).<sup>8</sup>

### **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).

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<sup>4</sup> 20 C.F.R. § 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).

<sup>5</sup> *Id.* at § 10.607(a).

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

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

<sup>8</sup> *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision dated November 29, 2017 of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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