



## **FACTUAL HISTORY**

On January 12, 2017 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 7, 2017, he injured his knees and lower back when he slipped and fell on ice in front of an apartment building while delivering mail. He stopped work on January 8, 2017.

Appellant was initially treated in urgent care by Dr. Mary Ann Demetrius, an internist, who related in a January 9, 2017 note that appellant was examined for a work-related left and right knee injury and some low back pain after he slipped on snow on January 7, 2017. Dr. Demetrius requested that appellant be excused from work for the rest of the week.

A January 12, 2017 duty status report (Form CA-17) by Miriam Vitale, a physician assistant, noted a diagnosis of left knee sprain. Ms. Vitale advised that appellant could work part-time (four hours), limited duty.

On January 17, 2017 appellant returned to work.

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

In a February 27, 2017 duty status report, Ms. Vitale again noted that appellant could work part time (six hours) with restrictions. She noted low back pain - 4/10 and diagnosed left knee sprain.

By decision dated April 3, 2017, OWCP denied appellant's traumatic injury claim. Although appellant established that the January 7, 2017 incident occurred as alleged, OWCP found that he failed to establish the medical component of fact of injury. It explained that a physician assistant was not considered a physician under FECA. OWCP further explained that Dr. Demetrius' notations of "pain" and "injury" did not constitute a medical diagnosis in connection with the accepted events.

On November 20, 2017 appellant requested reconsideration. He noted that he had a signed note from a medical doctor, but no additional evidence was included with the request. Appellant also explained that he was a disabled veteran who had post-traumatic stress disorder (PTSD) and, therefore, was "not as quick or understanding" as he used to be.

By decision dated December 5, 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 his 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.<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 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 also 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 November 20, 2017 request for reconsideration as it was insufficient to warrant merit review under 5 U.S.C. § 8128(a).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, he has not advanced a relevant legal argument not previously considered by OWCP, and appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP.

On November 20, 2017 appellant requested reconsideration of OWCP's April 3, 2017 decision denying his traumatic injury claim. Along with his reconsideration request, he provided a handwritten statement, which related that he had a doctor's note and explained that he was a disabled veteran with PTSD. The Board notes that OWCP denied appellant's traumatic injury claim because of insufficient medical evidence to establish a diagnosis in connection with the accepted January 7, 2017 employment incident. As the underlying issue in this case was a medical issue, it must be addressed by pertinent new and relevant medical evidence.<sup>8</sup> Appellant's statement is irrelevant to the issue of causal relationship in this case. As the Board has held, the submission of evidence or argument which does not address the particular issue involved does not constitute

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

<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> 20 C.F.R. § 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> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

a basis for reopening a case.<sup>9</sup> Accordingly, the Board finds that appellant did not provide OWCP with any evidence which has met the requirements of 20 C.F.R. § 10.606(b)(3) sufficient to require further merit review of his claim. Therefore, OWCP properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).<sup>10</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> See *E.G.*, Docket No. 18-270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>10</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).