



## ISSUE

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

## FACTUAL HISTORY

On June 5, 2014 appellant, then a 46-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, at 3:07 p.m. on that date she sustained a lumbar injury while lifting approximately 600 weekly newspapers in the performance of duty. She stopped work on June 10, 2014. In a June 17, 2014 letter, the employing establishment controverted the claim.

By decision dated July 24, 2014, OWCP denied appellant's claim, finding that the evidence of record was insufficient to support that the claimed incident occurred as alleged.

On August 21, 2014 OWCP timely received appellant's request for a review of the written record before a representative of OWCP's Branch of Hearings and Review, which was postmarked August 19, 2014.

By decision dated January 21, 2015, an OWCP hearing representative modified the prior decision to accept that the alleged incident occurred as alleged, but affirmed the denial of the claim as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the June 5, 2014 work incident. The hearing representative found that the submitted medical reports lacked sufficient rationale and did not differentiate between the effects of appellant's current back condition and her underlying lumbar condition.

On May 14, 2015 appellant requested reconsideration and submitted additional medical evidence. By decision dated June 9, 2015, OWCP denied modification of its January 21, 2015 decision as the medical evidence failed to provide medical rationale explaining how the accepted incident caused appellant's current back condition.

On September 14, 2015 appellant requested reconsideration and submitted additional evidence. By decision dated December 3, 2015, OWCP denied modification of its June 9, 2015 decision. It found that the medical evidence of record was insufficient to support a material worsening of appellant's preexisting condition as the physicians failed to provide objective evidence of a worsening of her condition or any medical rationale to support that her current condition was aggravated by the June 5, 2014 employment incident.

On April 25, 2016 appellant requested reconsideration. She also submitted additional evidence. By decision dated July 25, 2016, OWCP denied modification of its December 3, 2015 decision as the medical evidence was of insufficient probative value to establish causal relationship.

On July 24, 2017 appellant, through counsel, requested reconsideration. Counsel argued that the medical evidence in the record as a whole supported appellant's claim as her physicians provided unequivocal opinions that her preexisting back condition was aggravated by the accepted June 5, 2014 employment incident. She further argued that OWCP improperly denied the claim due to the existence of a preexisting back condition and/or because OWCP felt that her aggravation

was insignificant, despite the fact that it precipitated an immediate need for back surgery. No additional evidence was submitted.

By decision dated September 19, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim because she failed to advance a relevant legal argument or submit any relevant and pertinent new evidence.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</sup> 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.<sup>5</sup> A timely application for reconsideration, including all supporting documents, must set 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.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On July 24, 2017 counsel requested reconsideration of OWCP's July 25, 2016 decision, which denied modification of its previous decision denying appellant's claim. The underlying issue on reconsideration is medical in nature -- whether appellant established that her current back condition was caused or aggravated by the employment incident of June 5, 2014.

In a July 24, 2017 letter, counsel argued that OWCP improperly denied the claim due to the existence of a preexisting back condition and/or because OWCP felt that her aggravation was insignificant, despite the fact that it precipitated an immediate need for back surgery. She further

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<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *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.

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(a), (b).

alleged that appellant's physicians provided unequivocal opinions that appellant's preexisting back condition was aggravated by the June 5, 2014 employment incident.

As noted above, the Board does not have jurisdiction over the last merit decision issued by OWCP on July 25, 2016. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant is essentially arguing the merits of the claim. However, she did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. OWCP's prior decisions included discussions of the medical evidence and explained why appellant had not met her burden of proof to establish causal relationship between the accepted June 5, 2014 employment incident and her current back condition. Appellant thus did not advance a new and relevant legal argument not previously considered. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>8</sup>

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of reconsideration. The underlying merit issue in this case is whether appellant has established that her lumbar condition is causally related to the accepted June 5, 2014 employment incident. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.<sup>9</sup> However, appellant did not submit any new medical evidence with her request for reconsideration showing an employment-related lumbar injury.

The Board accordingly finds that appellant failed to meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> *M.S.*, Docket No. 18-0222 (issued June 21, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

<sup>9</sup> *B.G.*, Docket No. 16-1377 (issued November 22, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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