

**United States Department of Labor
Employees' Compensation Appeals Board**

J.H., Appellant)	
)	
and)	Docket No. 18-0875
)	Issued: October 11, 2018
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION, Atlanta, GA,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2018 appellant filed a timely appeal from a March 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated July 13, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 25, 2017 appellant, then a 47-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty on May 5, 2017, he injured his left shoulder when he “forcefully shut” the rear hatch on his employer-provided sport utility vehicle (SUV).² He indicated that he reached up with both arms to pull the rear hatch down, and immediately felt pain in his left shoulder upon closing the hatch. Appellant did not stop work at the time of the alleged injury. No additional evidence and/or information accompanied appellant’s May 25, 2017 Form CA-1.

In a June 2, 2017 claim development letter, OWCP requested that appellant submit additional factual information, as well as a comprehensive narrative medical report from his treating physician that explained how shutting the SUV hatch caused his medical condition. It afforded appellant 30 days to submit the requested information.

On June 13, 2017 Dr. W. David Bruce, a Board-certified orthopedic surgeon, treated appellant for left shoulder pain. Appellant reported that, on May 5, 2017, while he was shutting his truck tailgate, he experienced sudden left shoulder pain which persisted on and off since that time. He previously had left shoulder surgery and reportedly was doing well until the May 5, 2017 incident. Dr. Bruce noted that hopefully it was “scar tissue,” but he was also concerned that it could be a loose body. He performed an injection into the left subacromial bursa. Dr. Bruce’s diagnoses included left shoulder primary osteoarthritis and loose body of the left shoulder. Appellant was instructed to return if his condition did not improve.

In a July 13, 2017 decision, OWCP denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed left shoulder condition and the accepted May 5, 2017 employment incident. It noted that Dr. Bruce failed to explain how closing the SUV door materially worsened appellant’s preexisting shoulder condition.

On February 20, 2018 appellant requested reconsideration. He submitted the appeal request form that accompanied OWCP’s July 13, 2017 decision. OWCP did not receive any additional evidence or argument in support of appellant’s request for reconsideration.

By decision dated March 1, 2018, OWCP denied appellant’s request for reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of FECA, OWCP has the discretion to reopen a case for review on the merits.³ It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain

² The incident occurred at the Mid-South Institute of Self-Defense Shooting, Lake Cormorant, MS.

³ 5 U.S.C. § 8128(a).

review of the merits if his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

OWCP denied appellant’s traumatic injury claim because he failed to establish causal relationship. Thereafter, it denied appellant’s timely reconsideration request, without a merit review.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant also did not advance a relevant legal argument not previously considered by OWCP or provide relevant and pertinent new evidence not previously considered by OWCP. His February 20, 2018 reconsideration request consisted only of a mark on an appeal request form indicating he wanted reconsideration. Appellant did not offer any argument or submit any evidence in support of his request. He suggested no reason for OWCP to reconsider the denial of his traumatic injury claim. Such a request is insufficient to warrant reopening his case for further merit review.⁶ Accordingly, appellant did not 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.

On appeal appellant asserts that his physician feels that he established “causal relationship.” On his application for review (Form AB-1), he referenced a February 1, 2018 letter from his physician, which reportedly addressed the issue of causal relationship. OWCP considered all the evidence received at the time of its March 1, 2018 decision, and the February 1, 2018 document referenced by appellant is not part of the record.

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).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b).

⁶ *See L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 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