

of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

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 December 29, 2017 appellant, then a 64-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2017 she twisted her left knee while in the performance of duty. She explained that she ran into a patient's room to prevent him from falling and slipped on a liquid substance on the floor. Appellant's right leg went outward, her left leg buckled beneath her, and she twisted her left knee. On the reverse side of the claim form the employing establishment controverted the claim as there was no medical evidence to support a work-related injury.

A December 12, 2017 left knee x-ray revealed no acute findings.

In an encounter note dated December 22, 2017, Dr. Eric D. Parks, a Board-certified family practitioner and sports medicine specialist, noted that appellant complained of severe left knee pain of 11 days' duration. The notes indicated a work-related injury on "[December 11, 2017]" when appellant slipped on a wet substance and fell in a patient's room. On physical examination Dr. Parks reported appellant's left knee had a normal alignment and normal range of motion, but noted mild joint effusion and a mild limp. He diagnosed a left knee sprain and ordered a magnetic resonance imaging (MRI) scan. Dr. Parks indicated that, based on the mechanism of injury and his examination findings, he was concerned that appellant sustained an acute medial meniscus tear. He recommended sedentary work until appellant was cleared by an orthopedist.

In a January 12, 2018 development letter, OWCP notified appellant of the type of medical evidence needed to establish her traumatic injury claim. It requested that she provide a narrative report from her attending physician, which included a diagnosis and an explanation as to how the reported work incident either caused or aggravated a medical condition. OWCP afforded her 30 days to submit the requested information.

In a December 12, 2017 work excuse note, Dr. Bitia Mansouri, a Board-certified family practitioner, restricted appellant's lifting to a maximum of 25 pounds.

² 5 U.S.C. § 8101, *et seq.*

³ The Board notes that, following the January 22, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

In a follow-up December 27, 2017 note, Dr. Parks recommended that appellant not lift, twist her knee, bend, squat, or walk more than 15 minutes at a time. He again recommended sedentary desk duty until MRI scan results were reported.

A December 27, 2017 employing establishment incident report indicated that around 5:00 a.m. on December 12, 2017 appellant entered a room where a patient was attempting to get out of bed. Appellant rushed over to assist him and slipped on water or urine on the floor. She grabbed the side rail to prevent herself from falling and twisted her left knee.

On December 29, 2017 appellant accepted a limited-duty assignment.

In early January 2018, Dr. Parks continued to recommend appellant remain on sedentary desk duties. The employing establishment offered appellant another limited-duty assignment, which she accepted on January 8, 2018.

By decision dated February 14, 2018, OWCP denied appellant's claim. It found that she failed to establish that her left knee sprain was causally related to the accepted December 12, 2017 employment incident.

On January 7, 2019 appellant, through counsel, requested reconsideration of the February 14, 2018 decision.

By decision dated January 22, 2019, OWCP denied appellant's request for reconsideration.⁴

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ 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.⁷

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

⁴ On March 7, 2018 OWCP associated nine pages of medical records for a different individual, R.P., with appellant's case record. It found that this additional evidence, received on March 7, 2018, was insufficient to warrant further merit review. However, OWCP failed to recognize that the medical evidence did not pertain to appellant and had been placed into the wrong file.

⁵ 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).

⁶ 20 C.F.R. § 10.607.

⁷ *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.

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.⁸ 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.⁹

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).

While appellant timely requested reconsideration, she neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to merit review based the first or second requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant did not fulfill the third requirement under 20 C.F.R. § 10.606(b)(3). OWCP previously denied her claim because the medical evidence failed to establish causal relationship between appellant's left knee sprain and the accepted December 12, 2017 employment incident. Since issuing its February 14, 2018 decision, it has not received new evidence regarding appellant's left knee condition. Counsel did not submit any additional evidence or argument with the January 7, 2019 request for reconsideration. Therefore, the Board finds that appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

As appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3) in her request for reconsideration, pursuant to 20 C.F.R. § 10.608, OWCP properly found that she was not entitled to further merit review of her traumatic injury claim.

CONCLUSION

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

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.608(a), (b).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2019
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