

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 November 9, 2016 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that earlier that same day he had been attacked by a dog while in the performance of duty. The dog reportedly bit appellant's ankle, which caused him to fall backwards, striking his head on the ground. Appellant described his injuries as a dog bite and head contusion.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16) dated November 9, 2016, which authorized treatment for a dog bite and head contusion. In a November 9, 2016 attending physician's report, which is on the reverse side of the Form CA-16, Rebecca Hafer, a physician assistant, noted a November 9, 2016 date of injury and diagnoses of dog bite and head contusion. She checked a box marked "yes" indicating that appellant's condition was caused by the November 9, 2016 employment incident.

In a November 9, 2016 report, Dr. Abdul Tak, Board-certified in emergency medicine, related that appellant was bitten by a dog and fell backwards hitting the back of his head, neck, and left hand. Upon physical examination, he observed tenderness in the midline of the neck with left trapezius and paraspinal muscle tenderness. Dr. Tak also noted facial trauma with a small hematoma over the left occipital and a laceration over the right leg and shin. Neurological examination showed normal sensation and intact cranial nerves bilaterally. Dr. Tak diagnosed right lower leg laceration, neck sprain, and head injury.

A November 9, 2016 head computerized tomography (CT) scan showed no evidence of intracranial hemorrhage, no cranial fracture, or any other acute traumatic abnormality. A CT scan of the cervical spine demonstrated no evidence of cervical spine fracture or malalignment.

Appellant returned to urgent care for follow-up examination. In a November 10, 2016 report, Dr. Lum Nyindem, a Board-certified internist, conducted an examination and diagnosed laceration in the right lower leg, neck pain, and unspecified head injury. In a November 14, 2016 progress note, Dr. Tak diagnosed muscle spasm and concussion.

In a November 17, 2016 emergency room report, Christopher Brandon, a certified physician assistant, related that appellant was seen in the emergency room for complaints of worsening nausea and headaches since he fell backwards and hit his head after he was bitten by a dog eight days prior. He reported that neurological and sensation examinations were normal with no focal deficits. Mr. Brandon diagnosed concussion and head injury.

In a November 20, 2016 report, Dr. Rohan Moffatt, a Board-certified family practitioner, noted appellant's November 9, 2016 employment injury. He reported normal neurological findings, except for abnormal tandem gait and stance. Dr. Moffatt diagnosed nausea and concussion without loss of consciousness.

In reports dated November 14 to December 21, 2016, Matthew Kearney, a certified physician assistant, reviewed appellant's history of the November 9, 2016 injury and provided examination findings. He noted normal neurological examination. Mr. Kearney diagnosed concussion without loss of consciousness, post-concussion headache, and neck sprain.

In a December 29, 2016 report, Dr. Gerald Apollon, Board-certified in emergency medicine, provided a history of the November 9, 2016 injury. He related that appellant had returned to work that day and began to experience dizziness and blurry vision and developed a severe headache. Dr. Apollon conducted an examination and noted intact neurological examination. He diagnosed post-concussion syndrome, unspecified fever, headache, and unspecified fall.

By development letter dated January 18, 2017, OWCP informed appellant that additional evidence was needed to establish his claim. It requested that he respond to an attached development questionnaire and provide medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant did not reply.

By decision dated February 22, 2017, OWCP denied appellant's claim. It found that the factual evidence submitted was insufficient to substantiate that the November 9, 2016 employment incident occurred as alleged. OWCP noted that appellant had been notified of discrepancies in his claim regarding the details of his injury, but he failed to clarify how the event occurred.

On March 2, 2017 appellant requested a telephonic hearing before a hearing representative from OWCP's Branch of Hearings and Review. A hearing was held on August 9, 2017.

By decision dated September 28, 2017, an OWCP hearing representative affirmed the February 22, 2017 decision as modified. He determined that the evidence of record was sufficient to substantiate that the November 9, 2016 incident occurred as alleged and provided diagnoses of right lower leg laceration, head injury, neck sprain, and concussion without loss of consciousness. However, the hearing representative denied appellant's claim finding that the medical evidence of record failed to establish a causal relationship between the diagnosed conditions and the accepted employment incident.

On October 30, 2017 appellant requested reconsideration. In an accompanying statement, he explained that he was resubmitting medical evidence that clearly indicated that he had complained of concussion symptoms due to a job injury. However, no additional medical evidence accompanied appellant's request for reconsideration.

By decision dated January 26, 2018, OWCP denied reconsideration of the merits of appellant's claim. It determined that appellant's statement was irrelevant or immaterial as the factual aspect of the case had been established. OWCP noted, "There is no new medical evidence in which your treating physician explains how the medical condition/injury is causally related to the work injury of November 9, 2016." Additionally, it found that appellant had neither raised substantive legal questions, nor submitted new and relevant evidence and, therefore, his reconsideration request was insufficient to warrant further review of its prior decision.

LEGAL PRECEDENT

Section 8128(a) of FECA⁴ 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 payment of compensation at any time on his own motion or on application.⁵

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, it will deny the request for reconsideration without reopening the case for review on the merits.⁹

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 did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. Consequently, he 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).

The Board further finds that appellant has failed to submit relevant and pertinent new evidence in support of his reconsideration request. Along with his reconsideration request, appellant submitted a narrative statement relating that he was submitting medical notes which clearly stated that he was complaining of concussion symptoms due to a job injury. His request was accompanied by a copy of OWCP's prior decision, but no additional medical evidence was received. The Board notes that OWCP denied appellant's traumatic injury because of insufficient medical evidence to establish causal relationship. As the underlying issue in this case was a

⁴ *Supra* note 1.

⁵ 5 U.S.C. § 8128(a).

⁶ 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).

⁷ 20 C.F.R. § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

medical issue, it must be addressed by relevant and pertinent new medical evidence.¹⁰ Appellant's statement, therefore, is insufficient to require further merit review of his claim.

Accordingly, the Board finds that appellant did not provide OWCP with any evidence which has met the regulatory requirements of 20 C.F.R. § 10.606(b)(3) sufficient to require further merit review of his claim. As such, OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹¹

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).¹²

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2019
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

¹⁰ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

¹² Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).