

FACTUAL HISTORY

On December 29, 2016 appellant, then a 50-year-old transportation security officer/screener, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2016, he pulled a bag off a conveyor belt at work and twisted his left hand. He stopped work on the date of injury and did not return.

In a report dated February 22, 2017, Dr. Sachin Kapoor, an attending osteopathic physician Board-certified in internal and occupational medicine, diagnosed a nondisplaced spiral-type fracture of the fourth metacarpal. He prescribed physical therapy. In a report dated February 28, 2017, Dr. Kapoor noted that the fracture was healing well.

Appellant filed claims for compensation (CA-7 forms) for intermittent work absences from January 8 to March 4, 2017, and March 15 to April 15, 2017.

In a letter dated March 11, 2017, the employing establishment controverted the claim, contending that appellant had filed the claim as he had been provided with a notice of proposed removal on November 28, 2016 due to excessive absences. Appellant had been removed from the employing establishment effective January 6, 2017.

On March 31, 2017 OWCP accepted that the December 28, 2016 employment incident caused a left wrist sprain and a 4th metacarpal shaft fracture of the left hand.

In a report dated March 22, 2017, Dr. Kapoor found that the accepted fracture had resolved and returned appellant to full-duty work.

By decision dated June 7, 2017, OWCP denied appellant's claim for wage-loss compensation from January 8 to April 15, 2017 as the medical evidence of record was insufficient to establish that the accepted left 4th metacarpal fracture totally disabled him from work for that period.

On April 17, 2018 appellant requested reconsideration. In support thereof, he submitted an April 13, 2018 statement asserting that he was entitled to wage-loss compensation for his attendance at medical appointments and physical therapy treatment sessions through April 2017.

By decision dated April 25, 2018, OWCP denied reconsideration under 5 U.S.C. § 8128(a), finding that appellant did not submit new and relevant evidence or legal argument sufficient to warrant reopening the merits of his claim. It found that appellant's April 13, 2018 statement was not relevant to the medical issue of whether he was disabled from work for any portion of the claimed period.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by a claimant must:

² 5 U.S.C. § 8128(a).

(1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

In support of a request for reconsideration, claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument. On reconsideration, he provided his April 13, 2017 statement, contending that he was entitled to wage-loss compensation for attendance at medical appointments and physical therapy sessions.⁹ However, appellant was removed from employment effective January 6, 2017, which was prior to the dates claimed on his Form CA-7 for intermittent disability. Therefore, he would not have incurred any wage loss for attending medical appointments and physical therapy sessions during the period claimed.¹⁰ As appellant's legal argument has no reasonable color of validity, he did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a relevant

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

⁹ *See D.E.*, Docket No. 16-1604 (issued Feb. 1, 2017) (appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition).

¹⁰ The Board notes that while appellant has asserted that OWCP has denied his claim for mileage reimbursement, that issue is not presently before the Board as there is no adverse decision of record denying such a claim.

legal argument, and he is not entitled to a review of the merits of his claim based on the first and second requirements under 20 C.F.R. § 10.606(b)(3).¹¹

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence or argument, but the Board finds that appellant did not submit any such evidence or argument in this case.¹²

As appellant's application for review did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied the request for reconsideration without reopening the case for a review on the merits.¹³

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).

¹¹ See *C.F.*, Docket No. 17-1611 (issued December 13, 2017).

¹² *Supra* note 3.

¹³ *R.C.*, Docket No. 17-0595 (issued September 7, 2017); *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 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