

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

R.V., Appellant)	
)	
and)	Docket No. 18-0481
)	Issued: June 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Rockville, MD, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2018 appellant filed a timely appeal from a July 18, 2017 merit decision and a November 8, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish an injury causally related to the accepted June 2, 2017 employment incident; and (2) 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 June 7, 2017 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2017 he sustained a head injury as a result of a work-related motor vehicle accident (MVA). He indicated that he was making a left turn when another vehicle struck his vehicle on the left rear. Appellant reportedly received one staple on the left side of the head. On the reverse side of the claim form, the employing establishment indicated that he was in the performance of duty at the time of the claimed June 2, 2017 employment incident. Appellant stopped work immediately following the June 2, 2017 MVA, and received continuation of pay. The employing establishment further noted that on June 2, 2017 he initially received medical treatment at Shady Grove Medical Center.

In a June 13, 2017 development letter, OWCP informed appellant of the factual and medical evidence needed to support his claim for FECA benefits. It provided him a factual questionnaire to complete and return. OWCP afforded appellant 30 days to submit the requested factual and medical evidence. No information was received.

Appellant resumed his regular, full-time duties effective June 14, 2017.

By decision dated July 18, 2017, OWCP denied appellant's claim, finding that he had not submitted any medical evidence containing a diagnosis in connection with the accepted June 2, 2017 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 10, 2017 appellant requested reconsideration of OWCP's July 18, 2017 decision. With his request, he submitted a work release note dated June 2, 2017 indicating that he had been seen in the emergency department at Shady Grove Medical Center that day and could return to work without restrictions on June 7, 2017.³

By decision dated November 8, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

³ The healthcare provider's signature is illegible.

⁴ *Id.*

limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁸ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to the accepted June 2, 2017 employment incident.

OWCP sent appellant a development letter dated June 13, 2017, outlining appellant's burden of proof with regard to medical evidence, and afforded him 30 days to submit such evidence. However, no medical evidence was received within the allotted time frame. As such, appellant did not meet his burden of proof to establish a traumatic injury causally related to the accepted June 2, 2017 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.¹¹ The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.¹²

To require OWCP to reopen a case for merit review, 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.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁶

ANALYSIS -- ISSUE 2

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).

With his request for reconsideration, appellant submitted a work release note dated June 2, 2017 with an illegible signature, stating that he could return to work without restrictions on June 7, 2017. He 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. As such, appellant was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant submitted sufficient medical evidence to establish a diagnosis in connection with the accepted June 2, 2017 employment incident. Although the June 2, 2017 work release note was newly submitted, it did not contain a specific medical diagnosis. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ Accordingly, appellant is not

¹¹ 5 U.S.C. § 8128(a).

¹² *Id.*

¹³ 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).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

As appellant's request for reconsideration did not meet any of the requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied his request for reconsideration without reopening the case for review on the merits.¹⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to the accepted June 2, 2017 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 8 and July 18, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).