

(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).

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 28, 2014 appellant, then a 43-year-old property maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that he was stung on his top lip by a hornet while cutting vegetation on July 29, 2014 while in the performance of duty. He alleged that he had an allergic reaction to the sting and was hospitalized. Appellant's supervisor completed the Form CA-1 and concurred that appellant was stung by an insect while performing job duties. He noted that appellant received medical treatment that day and returned to work on July 30, 2014. Appellant's supervisor reported that appellant then claimed that he developed a groin infection and back injuries as a result of the sting. He noted that the employing establishment did not support appellant's claim for a groin infection or back injuries as these conditions preexisted the July 29, 2014 employment insect sting.

An August 4, 2014 report from Dr. W. David Bruce, an orthopedic surgeon, diagnosed cervical nerve root pain and left shoulder joint pain. He reported on August 4, 2014 that appellant's lumbar pain and left shoulder pain began a few days before when he was stung in the lip by a bee. Dr. Bruce noted that appellant was stung by a wasp and threw the loppers he was using after the sting. Appellant had an allergic reaction and had to go to the emergency room. Dr. Bruce found that since the sting and emergency treatment appellant had diffuse unrelenting pain in his shoulder radiating down his arm. He opined, "I have never seen Parsonage Turner Syndrome [PTS] result from a bite, but I suspect it could. This sounds like [PTS] to me, especially the amount of pain he is actually in."

In an August 12, 2014 note, Dr. Bruce reviewed appellant's treatment and failure to improve. He found, "I cannot rule out [PTS] as a direct result of his sting. It is rare but it does happen." Dr. Bruce also noted that appellant had a pustule in his groin which appeared to be a staph infection.

In a letter dated September 18, 2014, OWCP requested additional factual and medical evidence in support of appellant's consequential injury claim. It allowed 30 days for a response.

⁴ Docket No. 17-0031 (issued July 11, 2017).

In a note dated September 18, 2014, Dr. Bruce again opined that appellant's condition was PTS. He noted, "I think it is direct from the stings [appellant] got." Dr. Bruce gave the differential diagnosis of PTS or brachial plexus disorder.

By decision dated October 23, 2014, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his accepted insect sting on July 29, 2014 and any other medical condition.

On November 18, 2014 Dr. Bruce described appellant's history of insect sting and initial treatment. He noted that appellant reported numbness and tingling which had been nonstop since the sting. Dr. Bruce reported that he requested electrodiagnostic testing to assist with the possible diagnosis of PTS. He noted that there was no standardized test for PTS and that it was a diagnosis of exclusion. Dr. Bruce reported that appellant made progress with nerve blocks which indicated that the original diagnosis of PTS developed from the sting was correct. He diagnosed PTS secondary to insect sting on July 29, 2014. Dr. Bruce again explained that to reach a diagnosis of PTS he had to rule out other possible diagnoses. He noted, "Prior to the sting on July 29th, [appellant] did not have a history of numbness and tingling in the upper extremity. The physical findings on his initial visit on August 4th remained consistent if not worse on each subsequent visit until he received the nerve blocks.... After receiving the nerve blocks I saw some improvement...." Dr. Bruce again opined that the insect sting on July 29, 2014 was the origin of appellant's condition.

On November 21, 2014 appellant, through counsel, requested an oral hearing from an OWCP hearing representative. He submitted his emergency room records from July 29, 2014 which indicated that he sustained multiple stings to his face with swelling of his lip and throat.

In a note dated December 3, 2014, Dr. Bruce opined that appellant developed PTS and that the nerve blocks were working well for him. He found that there was no doubt that PTS was the correct diagnosis.

In a November 1, 2014 note, Dr. Bruce diagnosed PTS or brachial plexitis from the insect sting. He opined that appellant's testing was required to rule out other causes of his conditions. In a note dated January 7, 2015, Dr. Bruce again diagnosed PTS from the work-related stings. He opined that appellant's condition fit the syndrome and the "way it happened."

On March 9, 2015 appellant returned to regular duty. In a note dated June 4, 2015, Dr. Bruce diagnosed PTS caused by a sting that occurred at work. He found that appellant had reached maximum medical improvement and provided an impairment rating.

On June 19, 2015 appellant testified at the oral hearing before an OWCP hearing representative. He indicated that while at work on July 29, 2014 he was stung on the upper lip by what he believed was a hornet. Appellant's lip began to swell, his throat began to close, and he could not breathe. Appellant received emergency attention for his reaction to the sting. He testified that his left shoulder began hurting the afternoon of July 29, 2014 following the stings. Appellant reported for work the next day, but did not work an entire shift because his shoulder was hurting. He sought medical treatment for his left shoulder on August 4, 2014 with Dr. Bruce.

OWCP's hearing representative allowed appellant an additional 30 days to submit medical evidence.

By decision dated August 11, 2015, OWCP's hearing representative reviewed the medical evidence and found that Dr. Bruce had not adequately explained how an insect bite would cause PTS. He further noted that Dr. Bruce had not indicated what test results confirmed the diagnosis of PTS. OWCP's hearing representative concluded that Dr. Bruce did not provide rationalized medical opinion evidence and that his opinions were of reduced probative value. He found that appellant had not met his burden of proof to establish a consequential injury.

On January 28, 2016 appellant, through counsel, requested reconsideration from the August 11, 2015 decision of OWCP's hearing representative. In support of this request, he submitted a medical narrative from Dr. Bruce dated January 12, 2016. Dr. Bruce diagnosed PTS and opined that appellant's insect bites resulted in this diagnosis. He concluded that as appellant's insect bites were work related and caused the PTS. Dr. Bruce noted "The literature supports this in that other creatures and bites have resulted in [PTS] and this has been confirmed by neurologist."

By decision dated August 5, 2016, OWCP denied modification. It found that appellant had not submitted medical evidence establishing a causal relationship between his accepted employment-related insect stings and his diagnosed condition of PTS.

On October 10, 2016 appellant, through counsel, appealed the August 5, 2016 decision to the Board. In its July 11, 2017 decision, the Board found that the medical evidence of record was insufficient to establish PTS or any other medical condition as a result of his accepted July 29, 2014 insect sting.

On July 11, 2018 appellant, through counsel, requested reconsideration from OWCP. In support of this request, he provided a July 9, 2018 report from Dr. Bruce, who noted appellant's history of an insect sting. Counsel reported that appellant required hospitalization due to throat swelling and was treated with epinephrine and steroids. Appellant then developed unrelenting shoulder pain. Dr. Bruce repeated his diagnosed of PTS or a form of brachial plexus neuritis. He noted that this condition was rare. Dr. Bruce reported, "I have no knowledge of whether insects have ever been reported [as causing PTS] but it is poorly understood." He found that appellant's electromyogram (EMG) and physical examination comported with PTS. Dr. Bruce concluded, "I do believe with a reasonable degree of medical certainty that it is related to this sting that he suffered."

By decision dated July 13, 2018, OWCP denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a). It found that Dr. Bruce's July 8, 2018 report was cumulative and substantially similar to evidence previously considered.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (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.⁵

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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).

In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and he did not advance a new and relevant legal argument not previously considered. Accordingly, appellant is 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).⁹

Appellant also did not submit relevant and pertinent new evidence not previously considered by OWCP. Along with his reconsideration request, he provided a July 9, 2018 report from Dr. Bruce. This report merely reiterated his prior diagnosis and opinion on causal relationship without further rationale. As Dr. Bruce's July 9, 2018 report repeats evidence already in the case record, it is duplicative and cumulative and fails to constitute relevant and pertinent new evidence.¹⁰ Therefore, this evidence is insufficient to require OWCP to reopen appellant's claim for consideration of the merits.¹¹ Thus, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

As appellant's request for reconsideration failed to meet any of the criteria under 20 C.F.R. § 10.606(b)(3), the Board accordingly finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 20 C.F.R. § 10.608.

⁵ 20 C.F.R. § 10.606(b)(3); *see also* H.H., Docket No. 18-1660 (issued March 14, 2019); L.G., Docket No. 09-1517 (issued March 3, 2010); C.N., Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also* H.H., *supra* note 5; M.S., 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see also* H.H., *supra* note 5; E.R., Docket No. 09-1655 (issued March 18, 2010).

⁹ H.H., *supra* note 5.

¹⁰ T.T., Docket No. 18-1682 (issued February 22, 2019); P.H., Docket No. 18-1020 (issued November 1, 2018); L.H., 59 ECAB 253 (2007).

¹¹ T.T., *id.*; L.H., *id.*

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).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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