



## **FACTUAL HISTORY**

On June 1, 2017 appellant, then a 54-year-old electronic technician, filed a traumatic injury claim (Form CA-1), alleging that he sustained “lower back pain, right shoulder, arm, and hand pain” injuries on May 30, 2017 while in the performance of duty “lifting gliders with shipping container units double-stacked approximately 322 [pounds] each.” He indicated that proper equipment was not used and a crane, joist, and pallet jack should have been used to complete the job safely.

In a July 12, 2017 report, Dr. David F. Roberts, a family medicine specialist, diagnosed low back pain.

By decision dated August 2, 2017, OWCP accepted that the May 30, 2017 incident occurred as alleged, but denied appellant’s claim, finding that he failed to submit evidence containing a medical diagnosis in connection with the accepted incident. It noted that Dr. Roberts had diagnosed “low back pain,” but that pain is a symptom, not a diagnosis of a medical condition. OWCP concluded that appellant had not established fact of injury as he had not met the requirements to establish that he sustained an injury as defined by FECA.

Appellant subsequently submitted a July 31, 2017 magnetic resonance imaging (MRI) scan of the right elbow, ordered by Dr. Roberts, which demonstrated mild right common extensor tendinopathy.

On August 21, 2017 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

In support of his claim, appellant further submitted two reports dated September 5, 2017 from Dr. Henry T. Leis, a Board-certified orthopedic surgeon, who diagnosed lateral epicondylitis and advised that appellant was capable of limited-duty work, effective September 6, 2017.

By decision dated January 25, 2018, an OWCP hearing representative affirmed the prior decision, finding that, although appellant had established that medical conditions were diagnosed in connection with the accepted incident, the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted May 30, 2017 employment incident.

In response, appellant resubmitted the July 31, 2017 MRI scan, as well as the two September 5, 2017 reports from Dr. Leis.

On May 8, 2018 appellant requested reconsideration. He reiterated the factual and medical history of his claim and argued that Dr. Leis’ September 5, 2017 medical report was not mentioned in the January 25, 2018 hearing representative’s decision.

By decision dated August 10, 2018, OWCP denied appellant’s request for reconsideration of the merits of his claim, finding that he neither advanced a relevant legal argument nor submitted relevant and pertinent new evidence.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>2</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>3</sup> 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.<sup>4</sup> 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 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.<sup>5</sup> If the request is timely, but fails to meet at least one of requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

## 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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant argued that Dr. Leis' September 5, 2017 medical report was not mentioned in the hearing representative's decision. The Board finds, however, that Dr. Leis' reports were previously reviewed and considered by OWCP.

Appellant further argued on reconsideration that the employing establishment had committed a number of violations of agency and EEO regulations. He argued that his injury was a result of these violations. These contentions are not legal arguments addressing the underlying issue of whether appellant submitted sufficient medical evidence to establish a causal relationship

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<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.607.

<sup>4</sup> *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.

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

<sup>6</sup> *Id.* § 10.608(a), (b).

between his diagnosed conditions and the accepted May 30, 2017 employment incident at work.<sup>7</sup> The Board has held that the submission of an argument which does not address the particular issue involved does not constitute a basis for reopening a case. As such, appellant's opinions are irrelevant to the claim and do not comprise a basis for reopening the case on its merits.<sup>8</sup> As he did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP he is not entitled to a review of the merits of his claim based on the first and second requirements under section 10.606(b)(3).<sup>9</sup>

In support of his request for reconsideration, appellant resubmitted an MRI scan dated July 31, 2017 and two reports dated September 5, 2017 from Dr. Leis. The Board finds that the submission of this medical evidence did not require reopening appellant's case for merit review because appellant submitted the same July 31, 2017 MRI scan and September 5, 2017 reports by Dr. Leis, which were previously reviewed by OWCP's hearing representative in her January 25, 2018 decision. As these reports are substantially similar to evidence already of record, they are duplicative and do not constitute relevant and pertinent new evidence. Thus, appellant has not established a basis for reopening his case.<sup>10</sup>

The Board finds that as OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(3) it properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).<sup>11</sup>

### **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).

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<sup>7</sup> The Board notes that it is appellant's burden to submit sufficient evidence to establish a causal relationship. *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>9</sup> *D.D.*, Docket No. 18-0648 (issued October 15, 2018).

<sup>10</sup> *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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