

FACTUAL HISTORY

On March 19, 2016 appellant, then a 44-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained pain in the right shoulder area due to factors of her federal employment. She indicated that her work required her to use her right hand frequently to case mail. Appellant's work requirements included pulling down, sliding doors open and closed, reaching up for the back door, reaching for her seat belt, and using the gear shift hundreds of times per day. She noted that her shoulder was not painful on days when she was off work. Appellant indicated that she first became aware of her claimed condition on March 4, 2015 and first realized its relation to her federal employment on January 22, 2016. She provided a separate statement with her claim further describing her job duties.

In a March 21, 2016 report, Dr. Edward O'Hara, a family medicine specialist, noted appellant's history of injury and treatment, which included that she was a mail carrier for almost eight years. He related that she believed that the repetitiveness of her job and the amount of time that she used her right hand had contributed to her condition. Dr. O'Hara examined appellant and diagnosed biceps tendinitis of the shoulder. He also completed a form report titled "Doctor's Report of Occupational Illness or Injury." Dr. O'Hara diagnosed biceps tendinitis of the right shoulder and indicated that his diagnosis was consistent with appellant's account of her injury.

Dr. Allan C. Bushnell, Jr., Board-certified in occupational medicine, saw appellant on March 30 and April 7 and 27, 2016. In his March 30 and April 7, 2016 reports, he diagnosed biceps tendinitis and advised a return to work without restrictions. In his April 7, 2016 report, Dr. Bushnell determined that appellant was 100 percent improved. He found that she no longer had right biceps tendon and right shoulder pain at the shoulder. Dr. Bushnell reiterated the diagnosis and opined regarding the question of causation, "I do not think that the repetitive activities in her job, that she claimed was the mechanism of injury for her biceps tendinitis, caused her biceps tendinitis, and therefore, this is not a work caused injury. It is felt that her injury was a work exacerbation injury." Dr. Bushnell released appellant from care and returned her to full-duty work without restrictions on April 7, 2016.

By decision dated June 1, 2016, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted factors of her federal employment.

On May 23, 2017 appellant requested reconsideration. She argued that Dr. Bushnell had opined that her right shoulder condition was exacerbated by her work as a mail carrier. Appellant indicated that in January and February 2017, she saw an orthopedic surgeon who also indicated that her condition was exacerbated by her work. She noted that she had his statement. Appellant also related that because her electrocardiogram (EKG) was normal, that the orthopedic surgeon could not help her because surgery was not indicated. She explained that in May 2017 she began seeing her current physician. Appellant noted that he wanted to do a different therapy called osteopathic manipulative treatment, which she believed would benefit her symptoms and conditions. She indicated that she had her statement as well. Appellant explained that OWCP already had the medical documentation with her original claim and she was now submitting the new medical evidence from 2017.

OWCP received a copy of the March 18 and 21, 2016 reports from Dr. O'Hara. It also received copies of the March 30, April 7, 2016 reports from Dr. Bushnell.

By decision dated August 21, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ 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.⁵ 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.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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).

In the May 15, 2017 request for reconsideration, appellant argued that her original physician, Dr. Bushnell, opined that her right shoulder condition was exacerbated by her work as a mail carrier. The Board notes that his report was considered in the earlier decisions and as the issue is medical in nature, without further medical rationale this argument is insufficient to warrant a merit review. The Board notes that appellant did not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. The Board therefore finds that appellant is

³ 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).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

not entitled to a review of the merits based on the first and second requirements pursuant to section 10.606(b)(3).⁸

Appellant also did not submit relevant and pertinent new evidence with the May 15, 2017 request for reconsideration. She provided copies of previously considered and submitted medical reports. Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁹ Because appellant did not provide relevant and pertinent new evidence when requesting reconsideration, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁰

The Board finds that appellant has not met any of the three regulatory requirements under section 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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).

⁸ *Id.* at § 10.606(b)(3)(i) and (ii).

⁹ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁰ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 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