

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

_____)	
T.H., Appellant)	
)	
and)	Docket No. 18-1809
)	Issued: May 23, 2019
DEPARTMENT OF THE ARMY, 7TH SIGNAL)	
COMMAND, Fort Gordon, GA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 27, 2018 appellant filed a timely appeal from an August 3, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 31, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks 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.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of her merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 20, 2017 appellant, then a 45-year-old budget analyst, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2017 she was exposed in her office to a natural gas leak while in the performance of duty. She alleged that the exposure caused shortness of breath, dizziness, weakness, nausea, and a headache. On the Form CA-1, S.H., appellant's coworker, provided an April 20, 2017 witness statement confirming that appellant had become dizzy, had difficulty breathing, and complained of weakness, nausea, and a headache. She further noted that the fire department confirmed that there was a gas leak. Appellant stopped work on April 14, 2017.

In support of her claim, appellant submitted medical reports dated April 15, 2017 from a civilian hospital emergency department. Dr. Subhose X. Bathina, a treating family practitioner, noted that there had been a natural gas leak outside her window or near her desk. Appellant had fallen asleep at her desk and had become short of breath. Coworkers then discovered the gas leak. Appellant had been transported to an employing establishment hospital, then transferred to a civilian hospital for observation. Her condition had improved in the emergency room with oxygen delivered by nasal cannula. On examination, Dr. Bathina observed mildly elevated blood pressure. He diagnosed "[h]eadache and dizziness with natural gas exposure, presently improving," and "[u]ncontrolled hypertension, which is new."³ Dr. Bathina admitted appellant for observation. Appellant was discharged in stable condition on April 15, 2017 by Dr. Omar Ahmad, Board-certified in internal medicine, who noted a normal respiratory and neurological examination.

In a development letter dated June 1, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish the claim. It advised her of the type of medical and factual evidence needed, including corroboration of the gas leak, and a narrative report from her physician explaining how and why those events had caused her medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 14, 2017, OWCP accepted that the April 14, 2017 gas leak had occurred at the time, place, and in the manner alleged. It denied the claim, however, as the medical evidence of record did not contain a diagnosis of a medical condition caused by the accepted employment incident. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

In a letter dated August 5, 2017, appellant requested a review of the written record by an OWCP hearing representative. She submitted her August 5, 2017 statement asserting that on April 14, 2017 she had telephoned 911 to report the gas leak and received instructions to evacuate

³ Chest x-rays performed on April 14, 2017 demonstrated left ventricular prominence and minimal increased interstitial markings without infiltrate. Appellant also submitted laboratory test results.

the building. An emergency medical technician (EMT) observed appellant in an ambulance then transported her to the employing establishment's hospital.

Appellant provided witness statements from two coworkers and a safety and occupational health official, who corroborated the April 14, 2017 gas leak. Following the building evacuation, appellant had been stabilized at the employing establishment's hospital then treated at a civilian hospital. L.D. confirmed that appellant had been in the performance of duty at the time of the gas leak.

Appellant submitted a report dated April 14, 2017 by Dr. Christopher K. Jensen, a treating physician Board-certified in emergency medicine, affiliated with the employing establishment's hospital. Dr. Jensen noted her exposure to a gas leak at work earlier that day. While on oxygen at the hospital, appellant had normal oxygen saturation and no difficulty breathing. Dr. Jensen transferred her to a civilian hospital for observation of symptoms of central nervous symptom toxicity.

Appellant also provided an EMT observation and transport report dated April 14, 2017 and a hospital nursing log dated April 14 to 15, 2017.

By decision dated October 31, 2017, an OWCP hearing representative affirmed the denial of appellant's claim as fact of injury had not been established. He found that the medical evidence of record did not contain a diagnosis of a medical condition causally related to the accepted April 14, 2017 employment incident.

On July 31, 2018 appellant requested reconsideration. She submitted additional field notes dated April 14, 2017, signed by three EMTs, and a March 6, 2018 ambulance bill. Appellant also submitted copies of emergency medical service and hospital reports previously of record.

By decision dated May 4, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its October 31, 2017 merit decision. It found that the evidence submitted in support of her request was repetitive or duplicative of evidence previously of record.

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews

⁴ 20 C.F.R. § 10.608(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).

⁵ *Id.* at § 10.607(a).

the case on its merits.⁶ If the request is timely, but fails to meet at least one of the three requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for 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 her timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor she did advance a new and relevant legal argument not previously considered. Accordingly, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

With her July 31, 2018 reconsideration request, appellant submitted EMT field notes and an ambulance bill. This evidence, while new, is not relevant to the underlying medical issue of fact of injury.⁸ Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.⁹

Appellant also submitted copies of medical evidence and emergency medical technician reports previously of record. Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Moreover, the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹¹ Accordingly, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *H.H.*, *supra* note 4; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *B.E.*, Docket No. 18-0849 (issued January 7, 2019); *W.C.*, Docket No. 15-1878 (issued January 6, 2016); *see James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is not competent evidence on relationship medical issue).

⁹ *See F.B.*, Docket No. 18-1039 (issued December 6, 2018).

¹⁰ *R.G.*, Docket No. 18-1045 (issued February 1, 2019); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *James W. Scott*, 55 ECAB 606 (2004).

¹¹ *R.G.*, *id.*; *D. Wayne Avila*, 57 ECAB 642 (2006).

¹² *R.G.*, *id.*; *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (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).

On appeal, appellant contends that she is entitled to reimbursement for medical transport and hospital costs associated with the accepted April 14, 2017 employment incident. The Board notes that the employing establishment confirmed and OWCP accepted the April 14, 2017 occupational exposure. However, there is no evidence of record that the employing establishment completed an authorization for examination and/or treatment (Form CA-16) at the time of the accepted April 14, 2017 employment incident.¹³

CONCLUSION

The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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

¹³ Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018). See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).