

FACTUAL HISTORY

On November 25, 2016 appellant, then a 37-year-old physician, filed an occupational disease claim (Form CA-2) alleging that she developed an “itchy red rash from head-to-toe,” and experienced shortness of breath, hoarseness, and significant weight loss due to workplace exposures. She explained that her symptoms started when she moved to a new clinic.² Appellant identified January 25, 2016 as the date she first became aware of her condition and March 1, 2016 as the date she first realized it was related to her federal employment. She further indicated that the occupational health unit advised her that it was likely a reaction to formalin from new building materials.

In a January 5, 2017 development letter, with an attached questionnaire, OWCP advised appellant to submit additional factual information and medical evidence in support of her claim and provided a questionnaire for her completion. It afforded her 30 days to submit the requested information.

In a signed response to the letter dated February 3, 2017, appellant explained that she began to experience headaches, shortness of breath, coughing, a hoarse throat, and body rashes after moving to a new clinic in December 2015. She stated her conclusion that she was experiencing a reaction to the formalin in the new flooring, furniture, and other items in the new clinic. Appellant further claimed that she was exposed through air/inhalation, and that she had not been diagnosed until several months after the move. She explained that she requested to be removed from the space and further investigation of the work environment, but no action was taken, despite other workers experiencing similar issues. Appellant related that, while the worst of the symptoms had resolved, she had worsened allergic and asthmatic symptoms and she could not use cosmetics due to increased skin irritation. She stated that no treatment was effective to cure her symptoms and that her symptoms interfered with her daily work and personal activities.

By decision dated February 7, 2017, OWCP denied the claim finding that appellant had not established fact of injury. While it accepted that the factors of employment occurred as alleged by her, it found that no valid diagnosis had been produced in connection with the injury and, thus, she had not met the requirements for establishing an injury as defined by FECA. OWCP noted that it had not received any medical evidence.

On February 5, 2018 appellant submitted a request for reconsideration of the February 7, 2017 decision. With her request, she included an e-mail thread from mid-April 2016 through early May 2016 relating to underperforming air ventilation units at the employing establishment.

In a note of June 8, 2016 by Dr. Juan C. Fals, a Board-certified specialist in occupational medicine, it was reported that appellant presented with chronic throat clearing, coughing, wheezing, full-body rash, and tight skin sensation since January 2016. He related that there was a fair amount of new furniture, electronics, and flooring which could be off-gassing formaldehyde or other volatile organic compounds, in addition to dust or mold for which she had previously been

² Appellant reported that she was working at the Chula Vista Outpatient Clinic at the time of her alleged injury.

treated. Dr. Fals advised appellant to continue treatment with her primary care provider and to keep her office clean and free of dust and mold.

By decision dated April 4, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of the prior decision. It found that, while Dr. Fals' June 8, 2016 report contained a list of symptoms, he had not provided a definitive diagnosis in connection with her work factors or provided an opinion on causal relationship.

On June 18, 2018 appellant requested reconsideration of the April 4, 2018 decision. She explained that she included additional evidence from Dr. Fals and requested reconsideration on this basis.

The new evidence included a verbatim recitation of the encounter note of June 8, 2016 with a signed January 26, 2018 addendum. In the addendum, Dr. Fals wrote, "[appellant is] here for [a follow-up regarding] formalin exposure/sensitization as above, requests copy of note for OWCP. States symptoms have gradually and markedly improved ... with cessation of off[-]gassing as materials age. Has ongoing good [follow-up] with PCP/Allergist, continue management with them and RTC/contact me PRN."

By decision dated September 10, 2018, OWCP denied reconsideration of the merits of appellant's 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: (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.⁶ When a timely application for reconsideration does not meet at least one

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). 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. *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.606(b)(3).

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).

Although appellant timely requested reconsideration, she neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance relevant legal arguments not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant did not fulfill the third requirement under 20 C.F.R. § 10.606(b)(3) because she did not submit relevant and pertinent new evidence not previously considered by OWCP. OWCP previously denied her claim because the medical evidence of record did not include a definitive diagnosis in connection with her accepted employment exposure. In support of her reconsideration request, appellant submitted June 8, 2016 treatment notes by Dr. Fals with a January 26, 2018 addendum.

In the addendum, Dr. Fals generally noted that appellant's symptoms had markedly improved over the past 18 months as the "off-gassing" in the new office space had ceased. While his treatment notes indicated "formalin exposure/sensitization," he did not provide a definitive medical diagnosis in connection with the accepted employment exposure. Although evidence submitted on reconsideration need not carry appellant's burden entirely to warrant reopening the claim for merit review, the new evidence must at least be relevant and pertinent to the issue(s) upon which the claim was denied.⁸ While this evidence is new, it does not address the relevant issues regarding the claim because it does not provide a definitive medical diagnosis.⁹ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3) in her June 18, 2018 request for reconsideration. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

⁷ *Id.* at § 10.608(a), (b).

⁸ *R.R.*, Docket No. 18-1562 (issued February 22, 2019).

⁹ *Id.*

ORDER

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

Issued: May 9, 2019
Washington, DC

Christopher J. Godfrey, 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