

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

C.P., Appellant	)	
	)	
and	)	<b>Docket No. 19-0985</b>
	)	<b>Issued: November 7, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Niles, MI, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 5, 2019 appellant filed a timely appeal from an October 12, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed since OWCP's last merit decision, dated July 20, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 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 the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On January 28, 2017 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2016 she sustained an injury to her right shoulder when she lifted a heavy package while in the performance of duty. On the reverse side of the claim form, the employing establishment checked boxes marked "yes" indicating that she was in the performance of duty on October 15, 2016 and that it was in agreement with her account of the claimed employment incident.

In a report dated January 27, 2017, Dr. Daniel Sohn, a Board-certified orthopedic surgeon, noted appellant's history of injury. Based on x-ray interpretations, he diagnosed right shoulder right impingement syndrome and right incomplete rotator cuff tear or rupture of right shoulder.

In a report dated April 18, 2017, Dr. Sohn reviewed appellant's magnetic resonance imaging (MRI) scan dated April 3, 2017. He noted impressions of incomplete rotator cuff tear or rupture of right shoulder, and right shoulder left impingement syndrome.

In a development letter dated June 8, 2017, OWCP advised appellant that when her claim was submitted it appeared to be a minor injury that necessitated minimal or no lost time from work and payment of a limited amount of medical expenses had been administratively approved. It explained that her claim was being reopened for consideration because the medical bills had exceeded \$1,500.00. OWCP further informed appellant of the deficiencies of her claim, advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

In a report dated June 27, 2017, Dr. Sohn indicated that appellant complained of right shoulder pain. He diagnosed right subacromial impingement.

By decision dated July 20, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted October 15, 2016 employment incident.

OWCP received additional evidence. An April 2, 2017 MRI scan related diagnoses of: distal supraspinatus and infraspinatus tendinopathy with probable focal perforation of the distal supraspinatus tendon; acromioclavicular osteoarthritis; superior labrum anterior posterior of the glenoid labrum; and high-grade partial tear of the long head biceps tendon.

OWCP also received duplicate copies of Dr. Sohn's previously submitted reports. A March 22, 2018 duty status report (Form CA-17) noted appellant's work restrictions.

Appellant also submitted answers to OWCP's factual questionnaire, as well as a narrative statement dated June 10, 2018 wherein she described her right shoulder symptoms.

On July 14, 2018 appellant requested reconsideration of OWCP's July 20, 2017 decision.

By decision dated October 12, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA<sup>3</sup> does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</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>6</sup>

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.<sup>7</sup> 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.<sup>8</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).

With her timely request for reconsideration, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, however, the Board finds that appellant has not submitted any such evidence in this

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<sup>3</sup> *Supra* note 1.

<sup>4</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>5</sup> 20 C.F.R. § 10.607.

<sup>6</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. The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>7</sup> *Id.* at § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608(a), (b).

case.<sup>9</sup> After OWCP's July 20, 2017 decision, appellant submitted an April 2, 2017 MRI scan report and a March 22, 2018 duty status report (Form CA-17). The submission of this evidence does not require reopening of the claim for review of the merits because this evidence is irrelevant to the underlying issue of causal relationship. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> OWCP also received copies of Dr. Sohn's previously submitted reports. Evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>11</sup> Appellant did submit a narrative statement and a response to OWCP's factual questionnaire, however, the underlying issue of causal relationship is a medical issue which must be addressed by relevant medical evidence not previously considered.<sup>12</sup> Her own factual discussion of her claim does not constitute relevant medical evidence.<sup>13</sup> Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 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.

### 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).

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<sup>9</sup> *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *B.T.*, Docket No. 18-1397 (issued January 15, 2019); *supra* note 7; *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>10</sup> *T.B.*, Docket No. 19-0029 (issued June 21, 2019).

<sup>11</sup> *M.C.*, Docket No. 18-0841 (issued September 13, 2019).

<sup>12</sup> *See A.M.*, Docket No. 18-1033 (issued January 8, 2019); *see also Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>13</sup> *See B.R.*, Docket No. 17-1661 (issued January 4, 2018); *James A. Long*, 40 ECAB 538 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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