

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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on March 26, 1985 appellant, then a 39-year-old mail handler, sustained strains of the neck (cervical) and left shoulder, and a left ulnar nerve injury, when lifting sacks of mail while in the performance of duty. It assigned this claim OWCP File No. xxxxxx154. In a January 13, 1998 decision, OWCP adjusted appellant's compensation to reflect her actual earnings as a modified distribution clerk working 20 hours a week.

OWCP also accepted that on May 21, 2008 appellant sustained an aggravation of right lateral epicondylitis while pushing a steel bar. It assigned this claim OWCP File No. xxxxxx741.

When this case was last before the Board, by order dated April 26, 2017, the case was remanded to OWCP to combine File No. xxxxxx154 and File No. xxxxxx741.⁴ Following the Board's April 26, 2017 remand order OWCP combined the two claim files on August 10, 2017.

By decision dated August 24, 2017, OWCP noted that it had combined File No. xxxxxx741 with File Nos. xxxxxx860,⁵ xxxxxx530,⁶ and xxxxxx154, with the latter serving as the master file. It reviewed the medical evidence in all files and terminated appellant's medical benefits for cervical sprain, left shoulder sprain, and right lateral epicondylitis, effective August 24, 2017. Medical benefits for left ulnar neuropathy continued. The August 27, 2017 decision was affirmed by an OWCP hearing representative on May 15, 2018.

³ Docket No. 06-1087 (issued May 1, 2007) (affirmed OWCP's denial of a January 18, 2005 recurrence of disability); Docket No. 07-1422 (issued October 3, 2007) (order remanding case for consolidation of OWCP File Nos. xxxxxx530, xxxxxx154, and xxxxxx860); Docket No. 08-2147 (issued September 16, 2009) (under File No. xxxxxx154, case remanded for further development of occupational disease claim for aggravation of ulnar nerve damage, carpal tunnel syndrome (CTS), and complex regional pain syndrome (CRPS)); Docket No. 10-2280 (issued August 16, 2011) (case again remanded for further development of occupational disease claim); Docket No. 13-2130 (issued May 1, 2014) (order remanding case because OWCP did not comply with Board's October 3, 2007 remand order); Docket No. 15-0609 (issued April 26, 2017) (order remanding case to combine File No. xxxxxx154 and File No. xxxxxx741).

⁴ *Id.*

⁵ OWCP File No. xxxxxx860 concerns a March 14, 2002 occupational injury claim which OWCP accepted for right lateral epicondylitis.

⁶ OWCP File No. xxxxxx530 concerns a January 17, 2005 occupational injury claim which OWCP accepted for complications of medical care.

OWCP received occupational therapy reports from 2008 and 2012.

On November 29, 2018 appellant, through counsel, requested reconsideration. He also asserted that OWCP had not issued a *de novo* decision relative to its November 5, 2014 denial of a schedule award claim.

By decision dated December 17, 2018, OWCP denied appellant's request for reconsideration of the merits of the claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.⁷ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁸ 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.⁹

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.¹⁰ 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.¹¹

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 did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Rather, counsel merely asserted that OWCP had failed to rule upon appellant's January 28, 2015 request for reconsideration of the November 5, 2014 schedule award decision.¹² Section 501.2(c) of the Board's *Rules of Procedure*, provides that the Board has

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.607.

⁹ *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). Chapter 2.1602.4b

¹⁰ 20 C.F.R. § 10.606(b)(3); *see J.B.*, Docket No. 18-1531 (issued April 11, 2019).

¹¹ 20 C.F.R. § 10.608.

¹² The Board notes that on January 28, 2015 appellant filed an application of review of September 17 and November 5, 2014 OWCP merit decisions. OWCP has not, however, issued a decision regarding the request for reconsideration of the November 5, 2014 decision.

jurisdiction to consider and decide appeals from the final decision of OWCP in any case arising under FECA.¹³ The Board concludes that OWCP has not issued any other decision within the Board's jurisdiction following OWCP's November 5, 2014 decision. In her reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered regarding OWCP's May 15, 2018 decision. 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).

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether she has submitted sufficient evidence to modify a May 15, 2018 OWCP decision which found that residual of the accepted conditions of cervical sprain, left shoulder sprain, and right lateral epicondylitis had ceased. Because the underlying issue in this case is medical in nature, it must be addressed by relevant medical evidence, and the only medical evidence submitted by appellant subsequent to the May 15, 2018 decision, consisted of occupational therapy notes. As she has not submitted relevant and pertinent new evidence on appeal, appellant is not entitled to a review of the merits of her claim based on the third 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.

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).

¹³ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 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