

FACTUAL HISTORY

On September 9, 2017 appellant, then a 65-year-old immigration officer, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2017 she was attacked by a dog and sustained a bite on her buttocks while in the performance of duty. On the same form, a coworker, D.S., advised that she witnessed a German shepherd charge after appellant and corner her on a porch.² Appellant did not stop work. On September 18, 2017 she filed a separate Form CA-1 alleging that on September 9, 2017 she was handing out flyers in support of the Hurricane Harvey surge capacity force at private residences in Houston, Texas, when a dog approached D.S. from behind and bit her. Appellant noted that the dog then approached and attempted to bite her. She indicated that the dog did not break her skin with a bite, but rather forcibly attempted to grab and push her. Appellant advised that her supervisor recommended she be checked by medical personnel for “possible dog bite and bruising.”³

In an October 11, 2017 development letter, OWCP advised appellant that she filed two Forms CA-1 for the same injury and noted that the claim designated OWCP File No. xxxxxx980 would be deleted with all documents moved into OWCP File No. xxxxxx813. It requested that she submit additional evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how the reported September 9, 2017 incident at work caused or aggravated a medical condition. OWCP also requested that appellant respond to a questionnaire which posed various questions regarding the reported September 9, 2017 incident. It afforded her 30 days to submit the requested information.⁴

On October 18, 2017 OWCP received a completed questionnaire in which appellant noted that on September 9, 2017, while she and D.S. were canvassing a neighborhood in Houston, Texas, she walked to the front door of a residence and knocked while D.S. remained in the driveway. Appellant indicated that a dog came out of nowhere and bit D.S. on her left hip/buttock, after which D.S. was able to escape outside the property. She reported that the dog approached her from behind and struck out at her. Appellant indicated that the front door opened and the dog, which continued to growl at her, was called into the house. She advised that she and D.S. were taken to urgent care and that D.S. sustained bite wounds and bruising. Appellant indicated that her skin was not broken by the dog’s bite but noted that nevertheless she was “viciously attacked from behind.”⁵

² OWCP assigned this claim OWCP File No. xxxxxx813.

³ Appellant did not stop work when she filed the second traumatic injury claim form, which was assigned by OWCP as OWCP File No. xxxxxx980.

⁴ On October 11, 2017 OWCP requested that the employing establishment submit additional evidence within 30 days.

⁵ Appellant also submitted an undated citizen’s information card from the Harris County Sheriff’s Office which noted a case number and an offense title of “dog bite.”

Appellant also submitted an unsigned September 9, 2017 general instructions document from an emergency department which indicated that appellant had been evaluated on that date for a dog bite by Dr. Saad Abdullah, Board-certified in emergency medicine.

By decision dated October 31, 2017, OWCP accepted that the September 9, 2017 employment incident occurred as described. However, it denied appellant's traumatic injury claim on the basis of her failure to establish the medical component of fact of injury because "the medical evidence is not sufficient to establish that a medical condition was diagnosed in connection with the claimed event and/or work factors."

On December 22, 2017 appellant requested reconsideration of the October 31, 2017 decision.

In a December 18, 2017 statement, appellant indicated that, at the time of the September 9, 2017 employment incident, she was only provided with a medical release form from urgent care, but noted that she had since obtained medical evidence. She reported that she lost no time from work due to the September 9, 2017 employment incident and was only requesting that a medical bill related to the incident be paid.

In an October 27, 2017 e-mail, appellant requested that her team leader in Texas, S.M., provide additional details of the "dog bite" incident on September 9, 2017. She advised that, because she "did not physically suffer a bite" like D.S., the workers' compensation department of the employing establishment was "not convinced" of her claim. Appellant requested a statement from S.M. explaining what happened on September 9, 2017 and why it was important for her to be "checked out for a dog bite." In response, S.M. noted in an October 27, 2017 e-mail that management initially could not assess whether appellant needed to see a physician, but that it was later decided that referral for medical evaluation was necessary.⁶

In a September 9, 2017 report, Dr. Abdullah noted that appellant presented on September 9, 2017 with a chief complaint of a "dog bite" on her buttock occurring on that date. Appellant reported that she had no skin rash, dizziness, itching, fainting episodes, difficulty breathing, swelling, drainage, or trouble swallowing. Dr. Abdullah noted findings on physical examination of normal head, eyes, neck, cardiovascular system, and respiratory system. Appellant's back was normal without tenderness, all her skin was intact, her extremities were atraumatic, and she did not exhibit any motor or sensory deficit. Dr. Abdullah noted that there was no evidence of injuries to appellant's back or buttock, provided a diagnosis of "dog bite," and discharged appellant from his care in good condition.

By decision dated December 29, 2017, OWCP denied modification of the October 31, 2017 decision. It noted that the medical evidence of record did not contain an actual medical diagnosis connected with the accepted September 9, 2017 employment incident, *i.e.*, being approached and pushed by a dog.

⁶ Appellant also submitted a November 6, 2017 e-mail from her crew leader in Texas, E.H., who indicated that on September 9, 2017 appellant and D.S. were bitten by a dog on their posteriors.

On January 19, 2018 appellant requested reconsideration of the December 29, 2017 decision.

In a statement dated January 8, 2018, appellant indicated that it was true she did not suffer a bite mark on September 9, 2017, but she noted that this fact was not known at the time of the incident. She asserted that on September 9, 2017 she and her coworker were physically attacked and traumatized by a vicious dog as they were canvassing a neighborhood in Texas. Appellant reported that she and her coworker were taken to urgent care and evaluated and that only her coworker sustained bite marks on her posterior. She indicated that she did not know if she had bite marks or scratches until she was examined by a physician who did not find puncture wounds on her posterior.

Appellant also submitted a work travel summary noting that she incurred expenses in Alabama from September 3 to 5, 2017 and in Texas from September 6 to 30, 2017.

By decision dated April 13, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁷ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be

⁷ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an injury due to the accepted September 9, 2017 employment incident.

Appellant submitted a September 9, 2017 report from Dr. Abdullah who advised that appellant presented on September 9, 2017 with a chief complaint of a “dog bite” on her buttock occurring on that date. He noted findings on physical examination of normal head, eyes, neck, cardiovascular system, and respiratory system. Appellant’s back was normal without tenderness, all her skin was intact, and there was no evidence of injuries to her back or buttock. Dr. Abdullah diagnosed “dog bite” and discharged appellant from his care in good condition. However, this report does not establish the medical component of fact of injury as appellant clearly reported in an October 27, 2017 e-mail and other documents that she did not physically suffer a bite on September 9, 2017.¹³ As appellant was not bitten, a diagnosis of dog bite cannot be reasonably connected to the claimed incident. While it is factually accepted that appellant’s coworker was bitten and the same dog approached appellant and pushed her, there was no diagnosis in the case record connected with being approached or pushed by a dog. Accordingly, Dr. Abdullah’s finding of dog bite is insufficient to satisfy appellant’s burden of proof with respect to satisfying the medical component of fact of injury.¹⁴

Appellant also submitted an unsigned September 9, 2017 general instructions document from an emergency department which indicated that appellant had been evaluated on that date for a dog bite by Dr. Abdullah. However, this report has no probative value with respect to the underlying issue of this case because the Board has held that a report which has not been signed by a physician within the meaning of FECA cannot be considered probative medical evidence given its lack of proper identification.¹⁵

Currently, there is no evidence of record that establishes a medical diagnosis in connection with the accepted September 9, 2017 employment incident. Consequently, appellant failed to establish that she sustained an injury due to that incident.¹⁶

¹² *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹³ Appellant also indicated in September 18 and November 4, 2017 statements that her skin was not broken on September 9, 2017. In a November 6, 2017 e-mail, appellant’s crew leader in Texas, E.H., indicated that on September 9, 2017 appellant and D.S. were bitten by a dog on their posteriors. However, E.H. did not explain the basis for this comment.

¹⁴ *See P.S.*, Docket No. 18-1588 (issued March 5, 2019); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

¹⁵ *R.C.*, Docket No. 18-1639 (issued February 26, 2019). Appellant submitted an undated citizen’s information card from the Harris County Sheriff’s Office which noted a case number and an offense title of “dog bite.” However, this document is of no probative value because it does not constitute medical evidence. *See id.*

¹⁶ *See supra* notes 11 and 12.

On appeal appellant asserts that her claim should have been accepted by OWCP as she was in the performance of duty and was instructed to seek medical treatment after the incident. As noted above, there is no evidence of record that establishes a medical diagnosis in connection with the accepted employment incident. Consequently, appellant failed to establish that she sustained an employment injury on September 9, 2017, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.¹⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²¹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²² and the submission of evidence or argument which

¹⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁸ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁹ *Id.* at § 10.607(a). 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). 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.

²⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

²¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²² *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

does not address the particular issue involved does not constitute a basis for reopening a case.²³ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²⁴

ANALYSIS -- ISSUE 2

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).

Appellant filed a timely request for reconsideration on January 8, 2018,²⁵ but she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. In a January 8, 2018 statement submitted with her request for reconsideration, appellant indicated that it was true she did not suffer a bite mark on September 9, 2017, but she noted that this fact was not known at the time of the incident. Appellant asserted that she and her coworker were physically attacked by a dog as they were canvassing a neighborhood in Texas. She advised that she did not know if she had bite marks or scratches until she was examined by a physician who did not find puncture wounds on her posterior. These assertions do not show a legal error by OWCP or constitute a new and relevant legal argument. OWCP has accepted the occurrence of an employment incident on September 9, 2017 and appellant's statements merely revisit an aspect of her claim, *i.e.*, the factual component of fact of injury, which has already been established. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

In support of her request for reconsideration, appellant also submitted a work travel summary noting that she incurred expenses in Alabama from September 3 to 5, 2017 and in Texas from September 6 to 30, 2017. This evidence is not relevant as the underlying issue of this case is whether appellant has submitted sufficient medical evidence to establish a medical diagnosis in connection with the accepted September 9, 2017 employment incident. 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.²⁶ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review and appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant did not meet 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.

²³ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁴ *L.S.*, Docket No. 19-0117 (issued July 11, 2019); *John F. Critz*, 44 ECAB 788, 794 (1993).

²⁵ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²⁶ *See supra* note 24.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury due to the accepted September 9, 2017 employment incident. 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 April 13, 2018 and December 29, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 2, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board